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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
10 **AT SEATTLE**

11 WMI LIQUIDATING TRUST,

12 Plaintiff,

13 v.

14 FEDERAL DEPOSIT INSURANCE  
15 CORPORATION, in its corporate capacity,

16 BOARD OF GOVERNORS OF THE  
17 FEDERAL RESERVE SYSTEM,

18 and,

19 **COMPLAINT**

20 SUSAN C. ALLISON, TODD H. BAKER,  
21 EDWARD F. BACH, MELBA ANN  
22 BARTELS, ROBERT N. BATT, DAVID  
23 BECK, SEAN BECKETTI, HENRY J.  
24 BERENS, BRUCE W. BIVERT, ROBERT C.  
25 BJORKLUND, ROBERT C. BOXBERGER,  
26 ANTHONY JOSEPH BOZZUTI, GARY P.  
BRADY, CAREY M. BRENNAN, ALFRED  
BROOKS, CURT BROUWER, JOHN M.  
BROWNING, GREGORY G. CAMAS,  
KIMBERLY A. CANNON, GREGORY  
ALAN CARLISLE, THOMAS W. CASEY,  
GENNADIY DARAKHOVSKIY, DARYL D.  
DAVID, MARY BETH DAVIS, JAKE D.

COMPLAINT

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Tel. 206-516-3880

DOMER, DUANE DUCK, ANDREW J. ESCHENBACH, CAMILLE EVERETT, JACQUELINE FERGUSON, WILLIAM FINZER, STEPHEN FORTUNATO, BRIAN T. FOSTER, PETER FREILINGER, KEITH FUKUI, MATTHEW GASPARD, MICHELE S. GRAU-IVERSEN, TAMMY HARRINGTON, ROBERT C. HILL, DEBORA D. HORVATH, JEFFREY JONES, RAJIV KAPOOR, KENNETH E. KIDO, SUZANNE R. LEHRBERGER, RONALD M. LOWERY, MARC MALONE, MICHELLE MCCARTHY, SUSAN MCCARTHY, JOHN P. MCMURRAY, RANDY MELBY, JOE ANTHONY MELO, ROBERT G. MERRITT, RACHELLE M. MILEUR, THOMAS E. MORGAN, JOHN H. MURPHY, CASEY NAULT, MICHAEL RAPAPORT, MICHAEL REYNOLDSON, PATRICIA ROBERTS, LAURA C. ROGERS RODRIGUES, LUIS P. RODRIGUEZ, STEPHEN J. ROTELLA, FOAD SAID, DAVID SCHNEIDER, JANQUELIN F. SCHRAG, PATRICIA SCHULTE, DANIEL SHANKS, CHANDAN SHARMA, SCOTT SHAW, GENEVIEVE SMITH, JACOB E. SORENSON, STEVEN KENNETH STEARNS, STEVEN F. STEIN, MITCHELL STEVENS, RICHARD STRAUCH, JANE SUCHAN, JOSE O. N. TAGUNICAR, CRAIG E. TALL, ANDREW TAUBER, RADHA THOMPSON, ANN TIERNEY, DAVID A. TOMLINSON, BENJAMIN TURK, JOHN WEBBER, BRUCE WEBER, JEFFREY P. WEINSTEIN, ROBERT J. WILLIAMS, JR., STEPHEN E. WHITTAKER, JOHN F. WOODS, WEIJIA WU, ANTHONY F. VUOTO, KATHY H. YEYU, MICHAEL R. ZARRO,

Defendants.

Plaintiff WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”), a multiple savings and loan holding company that owned

1 Washington Mutual Bank (“WMB”), and WMI Investment Corp. (together with WMI, the  
2 “Debtors”), by and through its undersigned counsel, alleges as follows:

3 **NATURE OF ACTION**

4 1. WMILT brings this action to obtain a declaratory judgment that, as has  
5 already been determined by the Federal Deposit Insurance Corporation (the “FDIC”) as to  
6 certain payments, various “golden parachute” payments sought by the individual defendants  
7 are prohibited by federal regulations, absent regulatory approval. As directed by the  
8 Honorable Mary F. Walrath, United States Bankruptcy Judge, of the United States  
9 Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), who is presiding  
10 over the chapter 11 cases of the parent holding company of the largest bank to fail in United  
11 States history, WMILT brings this action against the following Defendants: (i) the ninety-  
12 two (92) claimants in the underlying claims litigation, each of whom is a former employee  
13 and/or officer of WMI or WMB, as the case may be, seeking payment of the prohibited  
14 severance and other employment-related benefits from the bankruptcy estates (the  
15 “Individual Defendants”); (ii) the FDIC; and (iii) the Board of Governors of the Federal  
16 Reserve System (the “FRB”). The Individual Defendants include some of WMI’s most  
17 senior executives and members of its Executive Committee. These same Individual  
18 Defendants seek to profit as a result of the bank failure and recover from WMILT pursuant to  
19 contracts or plans providing for large – and now prohibited – “golden parachute” payments.  
20 In their proofs of claim filed in the Debtors’ bankruptcy cases in the Bankruptcy Court, the  
21 Individual Defendants have alleged that the failure of WMB and the related sale of WMB’s  
22 assets to JPMorgan Chase Bank, N.A. (“JPMC”) triggered the extraordinary payouts that  
23 they are now claiming at the expense of other creditors in the Debtors’ bankruptcy estates.  
24 On August 23, 2013, the Bankruptcy Court directed WMILT to file this “declaratory  
25 judgment action (naming the FDIC, FRB, and all claimants [in the underlying litigation in the  
26 Bankruptcy Court]) seeking a determination [as to] whether WMILT is precluded [by certain

1 federal regulations] from paying any of the claimants if their claims are allowed.” *See* Order,  
 2 dated Aug. 23, 2013, a copy of which is annexed hereto as **Exhibit A** (the “Bankruptcy  
 3 Order”).

4 2. To prevent, among other things, the distorted incentives and inequities  
 5 that would result if employees and executives were rewarded when a bank or bank holding  
 6 company (for which they were responsible) fails, Defendant FDIC has promulgated  
 7 regulations, pursuant to the Federal Deposit Insurance Act (the “FDIA”), 12 U.S.C. §§ 1811  
 8 *et seq.*, that prohibit precisely the types of payments that the Individual Defendants are  
 9 seeking. *See* 12 U.S.C. § 1828(k). One such regulation, 12 C.F.R. § 359, *et seq.* (the  
 10 “Golden Parachute Regulations”), provides that, absent regulatory approval, insured  
 11 depository institutions, like WMB, and depository institution holding companies, like WMI,  
 12 are prohibited from making certain payments to an “institution affiliated party” upon or after  
 13 the termination of that party’s employment or affiliation with the depository institution or  
 14 holding company, where the requirement to make such payments is triggered by or  
 15 contingent on the termination and such entity is in financial distress at the time of  
 16 termination.<sup>1</sup> In fact, in response to a May 30, 2013 letter from WMILT, the FDIC has  
 17 expressly advised WMILT that the Individual Defendants’ claims arising from certain of the  
 18 contracts and plans at issue are indeed “golden parachute payments” prohibited by the  
 19 Golden Parachute Regulations. *See* Ltr. from the FDIC to Brian S. Rosen, dated July 16,

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 21  
 22 <sup>1</sup> The Golden Parachute Regulations provide that “[n]o insured depository institution or depository institution  
 23 holding company shall make or agree to make any golden parachute payment” as such term is defined by the  
 24 Golden Parachute Regulations. 12 C.F.R. § 359.2. Section 359.1(f) generally defines a golden parachute  
 25 payment as “any payment (or any agreement to make any payment) in the nature of compensation by any  
 26 insured depository institution [such as WMB] or an affiliated depository institution holding company [such as  
 WMI] for the benefit of any current or former [institution affiliated party (‘IAP’)],” such as the Individual  
 Defendants, which obligation is contingent on, or by its terms is payable on or after, the termination of such  
 party’s primary employment or affiliation with the institution or holding company, and is received on or after,  
 or is made in contemplation of, among other things, the insolvency of the insured depository institution or  
 depository institution holding company or the appointment of a receiver. *See* 12 C.F.R. § 359.1(f); *see also* 12  
 U.S.C. § 1828(k).

2013, a copy of which is annexed hereto as **Exhibit B** (the “FDIC Determination”). Accordingly, the FDIC has advised WMILT that WMILT is prohibited by federal law from making any payments pursuant to those contracts and plans without prior regulatory approval by the FDIC and FRB, and that making such payments could be punishable by the imposition of civil monetary penalties. *See id.* at 3.

3. WMILT also seeks a declaration regarding 12 C.F.R. § 163.39 (formerly 12 C.F.R. § 563.39) (the “Automatic Termination Regulation,” and together with the Golden Parachute Regulations, the “Federal Regulations”), which regulation requires that an employment contract between a savings association, such as WMB, and its officers and other employees must provide that, “[i]f the savings association is in default,<sup>2</sup> all obligations under the contract shall terminate as of the date of default.” 12 C.F.R. § 163.39(b)(4) (emphasis added). Indeed, if the relevant contract does not contain such an automatic termination clause, one will be deemed incorporated and read into the agreement. *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011) (a copy of which is annexed hereto as **Exhibit C**). In fact, in *Williams*, the FDIC obtained a judgment from this Court declaring that certain of the same contracts and plans involving certain of the Individual Defendants here are unenforceable as a result of the Automatic Termination Regulation. *See id.* This decision was affirmed on appeal to the United States Court of Appeals for the Ninth Circuit. *See Williams v. FDIC*, 492 Fed. App’x 796 (9th Cir. 2012). In plain disregard of this Court’s prior determination that certain of the contracts and plans are unenforceable under the Automatic Termination Regulation, several of the Individual Defendants who brought suit against the FDIC are now seeking to enforce those same contracts and plans against WMILT.

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<sup>2</sup> Section 3(x)(1) of the FDIA defines default as “any adjudication or other financial determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution . . . .”

1           4. As discussed more fully below, over the last four years, the Debtors,  
2 and later, WMILT, as successor in interest to the Debtors, have filed objections to proofs of  
3 claim asserted by numerous former employees of WMI and WMB, as the case may be, in the  
4 Debtors' bankruptcy cases, including the proofs of claims asserted by the Individual  
5 Defendants (the "Employee Claims"). The Debtors and WMILT have objected to the  
6 Employee Claims on a variety of bases, and, in February 2013, filed a motion seeking  
7 permission from the Bankruptcy Court to amend these objections to assert the Federal  
8 Regulations as additional defenses to the Employee Claims. Despite the FDIC's  
9 determination that any payments made pursuant to certain agreements discussed herein are  
10 prohibited by the Golden Parachute Regulations absent regulatory approval and the FDIC's  
11 explicit warning to WMILT that "any current or future settlements of golden parachute  
12 payments would result in a violation of Part 359 and potential civil money penalties," the  
13 Bankruptcy Court denied WMILT's Motion to Amend (as defined below) its claims  
14 objections to assert the Federal Regulations as a defense to the Employee Claims on grounds  
15 that, *inter alia*, the "amendment would be futile because any decision on the legal issue  
16 would not be binding on the FDIC and FRB because they are not parties to the Omnibus  
17 Objections." *See* Bankruptcy Order at 2.

18           5. While the Bankruptcy Court declined to grant WMILT's Motion to  
19 Amend, it recognized the merits of the proposed objections by expressly acknowledging that  
20 the Bankruptcy Court has no authority to direct payment on account of the Employee Claims  
21 without either the prior written approval of the FDIC and FRB or the entry of an order  
22 declaring that the Golden Parachute Regulations and the Automatic Termination Regulation  
23 do not preclude payment on account of the Employee Claims. In order to resolve the issue,  
24 the Bankruptcy Court simultaneously ordered WMILT to file this declaratory judgment  
25 action against the FDIC, FRB and the Individual Defendants. *See* Bankruptcy Order at 2.  
26

6. Accordingly, WMILT brings this action to obtain a declaratory judgment from this Court that any payments made pursuant to certain employment contracts and benefits plans entered into between WMI or WMB, as applicable, and its respective former employees are prohibited by the Golden Parachute Regulations and, as a result, WMILT may not make such payments, unless there is prior regulatory approval from the FDIC and FRB. WMILT further seeks a declaratory judgment that certain agreements entered into between the Individual Defendants and WMB were automatically terminated pursuant to the Automatic Termination Regulation upon the seizure of WMB by the Office of Thrift Supervision (“OTS”). In addition, WMILT seeks a declaratory judgment that those Individual Defendants who previously litigated the applicability of the Automatic Termination Regulation with respect to certain contracts and plans are barred by the doctrines of *res judicata* and collateral estoppel from litigating the same issue against WMILT. To avoid further expensive and protracted litigation, and to resolve the impasse faced by the Bankruptcy Court in accord with its express order, WMILT respectfully requests a declaratory judgment be entered as soon as is practicable.

## **PARTIES**

### **I. PLAINTIFF WMILT**

7. WMILT is the successor in interest to WMI and WMI Investment Corp., formerly debtors and debtors in possession. WMILT was formed in accordance with Section 27.1 of the Seventh Amended Plan, as defined below, and was established in accordance with Treas. Reg. § 301.7701-4(d) (1996) for the purpose of resolving claims and liquidating and distributing the Debtors’ assets. The principal offices of WMILT are located at 1201 Third Ave., Suite 3000, Seattle, Washington 98101.

8. WMI was a multiple savings and loan holding company that owned WMB, a federal savings bank chartered pursuant to the Home Owners’ Loan Act, 12 U.S.C. §§ 1461-70. WMI was incorporated in the State of Washington. WMI Investment Corp. was

1 a non-banking subsidiary of WMI. At all times, WMI, WMI Investment Corp. and WMB  
2 had their principal place of business in Seattle, Washington.

## 3 **II. DEFENDANTS**

4 The following Defendants are all named pursuant to the Bankruptcy Order.

### 5 **A. FDIC & FRB**

6 9. The FDIC is an agency with its principal office in Washington D.C.  
7 and with a field office in Seattle, Washington. The FDIC is charged by law with, among  
8 other duties, administering the FDIA, as amended, and the federal deposit insurance system.  
9 *See* 12 U.S.C. § 1811(a). Pursuant to the FDIA, the FDIC promulgated the Federal  
10 Regulations. The FDIC is sued in its corporate capacity. Under FDIC regulations, 12 C.F.R.  
11 § 303.244(a)(1), the FRB must provide approval of “golden parachute payments,” as such  
12 term is defined in the Golden Parachute Regulations, before such payments can be made.

13 10. The FRB is an agency of the United States with its principal address at  
14 20th St. and Constitution Ave., N.W., Washington, D.C. and with a branch in Seattle,  
15 Washington. The FRB is the federal agency responsible for the operation of the Federal  
16 Reserve System and the regulation and supervision of certain banking institutions, including  
17 depository institution holding companies. *See* 12 U.S.C. § 243. The FRB “may act in its  
18 own name and through its own attorneys in enforcing any provision of this title, regulations  
19 promulgated thereunder, or any other law or regulation, in any action, suit, or proceeding to  
20 which the [FRB] is a party and which involves the [FRB’s] regulation or supervision of any  
21 bank, bank holding company, . . . or the administration of its operations.” 12 U.S.C.  
22 § 248(p).

### 23 **B. WMI Employees**

24 11. Defendant Todd H. Baker is a resident of the State of California and  
25 was last known to reside at 45 El Camino Real, Berkeley, CA 94705. Defendant Baker was  
26 an employee of WMI and an officer of both WMI and WMB on and for some time before the



1 Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB  
2 (the “FDIC Receiver”), and advised that the FDIC Receiver was immediately taking  
3 possession of WMB’s assets (collectively, the “Bank Seizure”). During such period of  
4 employment, Defendant Baker’s principal place of employment with WMI was Seattle,  
5 Washington. Defendant Baker has entered into one or more of the agreements or plans at  
6 issue that specify that Washington law shall govern those agreements or plans. In connection  
7 with the Bank Seizure and WMI’s bankruptcy petition, Defendant Baker’s employment  
8 relationship with WMI and affiliation with WMB were terminated.

9           12. Defendant Alfred Brooks is a resident of the State of California and  
10 was last known to reside at 19421 Foxdale Circle, Huntington Beach, CA 92648. Defendant  
11 Brooks was an employee of WMI and an officer of both WMI and WMB on and for some  
12 time before the Bank Seizure. During such period of employment, Defendant Brooks’  
13 principal place of employment with WMI was Seattle, Washington. Defendant Brooks has  
14 entered into one or more of the agreements or plans at issue that specify that Washington law  
15 shall govern those agreements or plans. In connection with the Bank Seizure and WMI’s  
16 bankruptcy petition, Defendant Brooks’ employment relationship with WMI and affiliation  
17 with WMB were terminated.

18           13. Defendant Thomas W. Casey is a resident of the State of Texas and  
19 was last known to reside at 512 Terrell Rd., San Antonio, TX 78209. Defendant Casey was  
20 an employee of WMI and an officer of both WMI and WMB on and for some time before the  
21 Bank Seizure. During such period of employment, Defendant Casey’s principal place of  
22 employment with WMI was Seattle, Washington. Defendant Casey has entered into one or  
23 more of the agreements or plans at issue that specify that Washington law shall govern those  
24 agreements or plans. In connection with the Bank Seizure and WMI’s bankruptcy petition,  
25 Defendant Casey’s employment relationship with WMI and affiliation with WMB were  
26 terminated.

1           14. Defendant Daryl D. David is a resident of the State of Washington and  
2 was last known to reside at 561 Fortune Creek Lane, Cle Elum, WA 98922. Defendant  
3 David was an employee of WMI and an officer of both WMI and WMB on and for some  
4 time before the Bank Seizure. During such period of employment, Defendant David's  
5 principal place of employment with WMI was Seattle, Washington. Defendant David has  
6 entered into one or more of the agreements or plans at issue that specify that Washington law  
7 shall govern those agreements or plans. In connection with the Bank Seizure and WMI's  
8 bankruptcy petition, Defendant David's employment relationship with WMI and affiliation  
9 with WMB were terminated.

10           15. Defendant Debora D. Horvath is a resident of the State of Washington  
11 and was last known to reside at 18302 Ridgefield Rd. NW, Shoreline, WA 98177-3244.  
12 Defendant Horvath was an employee of WMI and an officer of both WMI and WMB on and  
13 for some time before the Bank Seizure. During such period of employment, Defendant  
14 Horvath's principal place of employment with WMI was Seattle, Washington. Defendant  
15 Horvath has entered into one or more of the agreements or plans at issue that specify that  
16 Washington law shall govern those agreements or plans. In connection with the Bank  
17 Seizure and WMI's bankruptcy petition, Defendant Horvath's employment relationship with  
18 WMI and affiliation with WMB were terminated.

19           16. Defendant John P. McMurray is a resident of the State of Washington  
20 and was last known to reside at 6929 SE 34th St., Mercer Island, WA 98040. Defendant  
21 McMurray was an employee of WMI and an officer of both WMI and WMB on and for some  
22 time before the Bank Seizure. During such period of employment, Defendant McMurray's  
23 principal place of employment with WMI was Seattle, Washington. Defendant McMurray  
24 has entered into one or more of the agreements or plans at issue that specify that Washington  
25 law shall govern those agreements or plans. In connection with the Bank Seizure and WMI's  
26

1 bankruptcy petition, Defendant McMurray's employment relationship with WMI and  
2 affiliation with WMB were terminated.

3           17. Defendant Stephen J. Rotella is a resident of the State of New York  
4 and was last known to reside at 101 Central Park W., Apt. 16G, New York, NY 10023.  
5 Defendant Rotella was an employee of WMI and an officer of both WMI and WMB on and  
6 for some time before the Bank Seizure. During such period of employment, Defendant  
7 Rotella's principal place of employment with WMI was Seattle, Washington. Defendant  
8 Rotella has entered into one or more of the agreements or plans at issue that specify that  
9 Washington law shall govern those agreements or plans. In connection with the Bank  
10 Seizure and WMI's bankruptcy petition, Defendant Rotella's employment relationship with  
11 WMI and affiliation with WMB were terminated.

12           18. Defendant David Schneider is a resident of the State of New Jersey  
13 and was last known to reside at 417 Herrontown Rd., Princeton, NJ 08540. Defendant  
14 Schneider was an employee of WMI and an officer of both WMI and WMB on and for some  
15 time before the Bank Seizure. During such period of employment, Defendant Schneider's  
16 principal place of employment with WMI was Seattle, Washington. Defendant Schneider  
17 has entered into one or more of the agreements or plans at issue that specify that Washington  
18 law shall govern those agreements or plans. In connection with the Bank Seizure and WMI's  
19 bankruptcy petition, Defendant Schneider's employment relationship with WMI and  
20 affiliation with WMB were terminated.

21           19. Defendant Craig E. Tall is a resident of the State of Washington and  
22 was last known to reside at 2005 Fabien Drive, Mercer Island, WA 98040. Defendant Tall  
23 was an employee of WMI and an officer of both WMI and WMB on and for some time  
24 before the Bank Seizure. During such period of employment, Defendant Tall's principal  
25 place of employment with WMI was Seattle, Washington. Defendant Tall has entered into  
26 one or more of the agreements or plans at issue that specify that Washington law shall govern

1 those agreements or plans. In connection with the Bank Seizure and WMI's bankruptcy  
 2 petition, Defendant Tall's employment relationship with WMI and affiliation with WMB  
 3 were terminated.

4 20. Defendant Robert J. Williams, Jr. is a resident of the State of  
 5 California and was last known to reside at 2601 Cordelia Rd., Los Angeles, CA 90049.  
 6 Defendant Williams was an employee of WMI and an officer of both WMI and WMB on and  
 7 for some time before the Bank Seizure. During such period of employment, Defendant  
 8 Williams' principal place of employment with WMI was Seattle, Washington. Defendant  
 9 Williams has entered into one or more of the agreements or plans at issue that specify that  
 10 Washington law shall govern those agreements or plans. In connection with the Bank  
 11 Seizure and WMI's bankruptcy petition, Defendant Williams' employment relationship with  
 12 WMI and affiliation with WMB were terminated.

13 21. Defendant Anthony F. Vuoto is a resident of the State of California  
 14 and was last known to reside at 1597 Via Di Salerno, Pleasanton, CA 94566-2222. As of,  
 15 and for some time before, the Bank Seizure, Defendant Vuoto was an officer of both WMI  
 16 and WMB. Furthermore, upon information and belief, although he entered into an  
 17 employment contract with WMI, Defendant Vuoto was on the payroll of WMB, rather than  
 18 WMI, for tax purposes. Defendant Vuoto has entered into one or more of the agreements or  
 19 plans at issue that specify that Washington law shall govern those agreements or plans. In  
 20 connection with the Bank Seizure and WMI's bankruptcy petition, Defendant Vuoto's  
 21 employment relationship with WMI and affiliation with WMB were terminated.

22 **C. WMB Employees**

23 22. Defendant Susan C. Allison is a resident of the State of California and  
 24 was last known to reside at 4627 Longview Drive, Rocklin, CA 95677-4467. Defendant  
 25 Allison was an employee of WMB on and for some time before the Bank Seizure. During  
 26 such period of employment, Defendant Allison's principal place of employment with WMB

1 was Seattle, Washington. Defendant Allison has entered into one or more of the agreements  
2 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
3 connection with the Bank Seizure on September 25, 2008, Defendant Allison's employment  
4 relationship with WMB was terminated. Defendant Allison was a plaintiff in *Williams v.*  
5 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

6 23. Defendant Edward F. Bach is a resident of the State of Florida and was  
7 last known to reside at 1140 W. Kesley Lane, Jacksonville, FL 32259. Defendant Bach was  
8 an employee of WMB on and for some time before the Bank Seizure. Defendant Bach has  
9 entered into one or more of the agreements or plans at issue that specify that Washington law  
10 shall govern those agreements or plans. In connection with the Bank Seizure on September  
11 25, 2008, Defendant Bach's employment relationship with WMB was terminated.

12 24. Defendant Melba Ann Bartels is a resident of the State of New York  
13 and was last known to reside at 2 Roxbury Rd., Garden City, NY 11530. Defendant Bartels  
14 was an employee of WMB on and for some time before the Bank Seizure. During such  
15 period of employment, Defendant Bartels' principal place of employment with WMB was  
16 Seattle, Washington. Defendant Bartels has entered into one or more of the agreements or  
17 plans at issue that specify that Washington law shall govern those agreements or plans. In  
18 connection with the Bank Seizure on September 25, 2008, Defendant Bartels' employment  
19 relationship with WMB was terminated.

20 25. Defendant Robert N. Batt is a resident of the State of Washington and  
21 was last known to reside at 4668 175th Ave. SE, Bellevue, WA 98006. Defendant Batt was  
22 an employee of WMB on and for some time before the Bank Seizure. During such period of  
23 employment, Defendant Batt's principal place of employment with WMB was Seattle,  
24 Washington. Defendant Batt has entered into one or more of the agreements or plans at issue  
25 that specify that Washington law shall govern those agreements or plans. In connection with  
26 the Bank Seizure on September 25, 2008, Defendant Batt's employment relationship with

1 WMB was terminated. Defendant Batt was a plaintiff in *Williams v. FDIC*, No. 09-504  
2 (RAJ) (W.D. Wash. Aug. 30, 2011).

3 26. Defendant David Beck is a resident of the State of Connecticut and  
4 was last known to reside at 71 Wahackme Rd., New Canaan, CT 06840. Defendant Beck  
5 was an employee of WMB on and for some time before the Bank Seizure. Defendant Beck  
6 has entered into one or more of the agreements or plans at issue that specify that Washington  
7 law shall govern those agreements or plans. In connection with the Bank Seizure on  
8 September 25, 2008, Defendant Beck's employment relationship with WMB was terminated.

9 27. Defendant Sean Beckett is a resident of the District of Columbia and  
10 was last known to reside at 3279 Van Hazen St., NW, Washington, DC 20015. Defendant  
11 Beckett was an employee of WMB on and for some time before the Bank Seizure. During  
12 such period of employment, Defendant Beckett's principal place of employment with WMB  
13 was Seattle, Washington. Defendant Beckett has entered into one or more of the agreements  
14 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
15 connection with the Bank Seizure on September 25, 2008, Defendant Beckett's employment  
16 relationship with WMB was terminated. Defendant Beckett was a plaintiff in *Williams v.*  
17 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

18 28. Defendant Henry J. Berens is a resident of the State of California and  
19 was last known to reside at 3005 Stafford Rd., Westlake Village, CA 91361. Defendant  
20 Berens was an employee of WMB on and for some time before the Bank Seizure. Defendant  
21 Berens has entered into one or more of the agreements or plans at issue that specify that  
22 Washington law shall govern those agreements or plans. In connection with the Bank  
23 Seizure on September 25, 2008, Defendant Berens' employment relationship with WMB was  
24 terminated.

25 29. Defendant Bruce W. Bivert is a resident of the State of Pennsylvania  
26 and was last known to reside at 1 Trimont Lane 460D, Pittsburgh, PA 15211. Defendant

1 Bivert was an employee of WMB on and for some time before the Bank Seizure. Defendant  
2 Bivert has entered into one or more of the agreements or plans at issue that specify that  
3 Washington law shall govern those agreements or plans. In connection with the Bank  
4 Seizure on September 25, 2008, Defendant Bivert's employment relationship with WMB was  
5 terminated.

6 30. Defendant Robert C. Bjorklund is a resident of the State of  
7 Washington and was last known to reside at 1710 N. Fife St., Tacoma, WA 98406.  
8 Defendant Bjorklund was an employee of WMB on and for some time before the Bank  
9 Seizure. During such period of employment, Defendant Bjorklund's principal place of  
10 employment with WMB was Seattle, Washington. Defendant Bjorklund has entered into one  
11 or more of the agreements or plans at issue that specify that Washington law shall govern  
12 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
13 Defendant Bjorklund's employment relationship with WMB was terminated. Defendant  
14 Bjorklund was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30,  
15 2011).

16 31. Defendant Robert C. Boxberger is a resident of the State of California  
17 and was last known to reside at 1520 Via Di Salerno, Pleasanton, CA 94556. Defendant  
18 Boxberger was an employee of WMB on and for some time before the Bank Seizure. In  
19 connection with the Bank Seizure on September 25, 2008, Defendant Boxberger's  
20 employment relationship with WMB was terminated.

21 32. Defendant Anthony Joseph Bozzuti is a resident of the State of  
22 Washington and was last known to reside at 3832 48th Ave. NE, Seattle, WA 98105.  
23 Defendant Bozzuti was an employee of WMB on and for some time before the Bank Seizure.  
24 During such period of employment, Defendant Bozzuti's principal place of employment with  
25 WMB was Seattle, Washington. Defendant Bozzuti has entered into one or more of the  
26 agreements or plans at issue that specify that Washington law shall govern those agreements



1 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Bozzuti's  
2 employment relationship with WMB was terminated.

3 33. Defendant Gary P. Brady is a resident of the State of Washington and  
4 was last known to reside at 8410 NE 27th Place, Clyde Hill, WA 98004. Defendant Brady  
5 was an employee of WMB on and for some time before the Bank Seizure. During such  
6 period of employment, Defendant Brady's principal place of employment with WMB was  
7 Seattle, Washington. Defendant Brady has entered into one or more of the agreements or  
8 plans at issue that specify that Washington law shall govern those agreements or plans. In  
9 connection with the Bank Seizure on September 25, 2008, Defendant Brady's employment  
10 relationship with WMB was terminated. Defendant Brady stayed on at JPMC and continues  
11 to work for JPMC today.

12 34. Defendant Carey M. Brennan is a resident of the State of Washington  
13 and was last known to reside at 10205 NE 60th St., Kirkland, WA 98033. Defendant  
14 Brennan was an employee of WMB on and for some time before the Bank Seizure. During  
15 such period of employment, Defendant Brennan's principal place of employment with WMB  
16 was Seattle, Washington. Defendant Brennan has entered into one or more of the agreements  
17 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
18 connection with the Bank Seizure on September 25, 2008, Defendant Brennan's employment  
19 relationship with WMB was terminated.

20 35. Defendant Curt Brouwer is a resident of the State of Washington and  
21 was last known to reside at 23933 W. Woodway Lane, Woodway, WA 98020. Defendant  
22 Brouwer was an employee of WMB on and for some time before the Bank Seizure. During  
23 such period of employment, Defendant Brouwer's principal place of employment with WMB  
24 was Seattle, Washington. Defendant Brouwer has entered into one or more of the  
25 agreements or plans at issue that specify that Washington law shall govern those agreements  
26



1 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Brouwer's  
2 employment relationship with WMB was terminated.

3 36. Defendant John M. Browning is a resident of the State of Washington  
4 and was last known to reside at 8145 Eleanor Place, Bainbridge Island, WA 98110.  
5 Defendant Browning was an employee of WMB on and for some time before the Bank  
6 Seizure. During such period of employment, Defendant Browning's principal place of  
7 employment with WMB was Seattle, Washington. Defendant Browning has entered into one  
8 or more of the agreements or plans at issue that specify that Washington law shall govern  
9 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
10 Defendant Browning's employment relationship with WMB was terminated.

11 37. Defendant Gregory G. Camas is a resident of the State of New Jersey  
12 and was last known to reside at 205 Hudson St., No. 1410, Hoboken, NJ 07030. Defendant  
13 Camas was an employee of WMB on and for some time before the Bank Seizure. Defendant  
14 Camas has entered into one or more of the agreements or plans at issue that specify that  
15 Washington law shall govern those agreements or plans. In connection with the Bank  
16 Seizure on September 25, 2008, Defendant Camas' employment relationship with WMB was  
17 terminated. Upon information and belief, since the Bank Seizure, Defendant Brady has been  
18 and is currently employed by JPMC.

19 38. Defendant Kimberly A. Cannon is a resident of the State of  
20 Washington and was last known to reside at 3907 El Cimo Lane NE, Bainbridge Island, WA  
21 98110. Defendant Cannon was an employee of WMB on and for some time before the Bank  
22 Seizure. During such period of employment, Defendant Cannon's principal place of  
23 employment with WMB was Seattle, Washington. Defendant Cannon has entered into one  
24 or more of the agreements or plans at issue that specify that Washington law shall govern  
25 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
26 Defendant Cannon's employment relationship with WMB was terminated.

39. Defendant Gregory Alan Carlisle is a resident of the State of Pennsylvania and was last known to reside at 8816 Ridge Ave. No. 4, Philadelphia, PA 19103. Defendant Carlisle was an employee of WMB on and for some time before the Bank Seizure. During such period of employment, Defendant Carlisle entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Carlisle's employment relationship with WMB was terminated.

40. Defendant Gennadiy Darakhovskiy is a resident of the State of Washington and was last known to reside at 24463 SE 46th Place, Issaquah, WA 98029. Defendant Darakhovskiy was an employee of WMB on and for some time before the Bank Seizure. During such period of employment, Defendant Darakhovskiy's principal place of employment with WMB was Seattle, Washington. Defendant Darakhovskiy's employment relationship with WMB was terminated on August 15, 2008.

41. Defendant Mary Beth Davis is a resident of the State of California and was last known to reside at 349 Merrilee Place, Danville, CA 94526. Defendant Davis was an employee of WMB on and for some time before the Bank Seizure. Defendant Davis has entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Davis' employment relationship with WMB was terminated. Defendant Davis was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

42. Defendant Jake D. Domer is a resident of the State of Washington and was last known to reside at 622 9th Ave. South, Kirkland, WA 98033. Defendant Domer was an employee of WMB on and for some time before the Bank Seizure. During such period of employment, Defendant Domer's principal place of employment with WMB was Seattle, Washington. Defendant Domer has entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In

1 connection with the Bank Seizure on September 25, 2008, Defendant Domer's employment  
2 relationship with WMB was terminated. Defendant Domer was a plaintiff in *Williams v.*  
3 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

4 43. Defendant Duane Duck is a resident of the State of California and was  
5 last known to reside at 60 Rose Ave., Mill Valley, CA 94941. Defendant Duck was an  
6 employee of WMB on and for some time before the Bank Seizure. During such period of  
7 employment, Defendant Duck's principal place of employment with WMB was Seattle,  
8 Washington. Defendant Duck has entered into one or more of the agreements or plans at  
9 issue that specify that Washington law shall govern those agreements or plans. In connection  
10 with the Bank Seizure on September 25, 2008, Defendant Duck's employment relationship  
11 with WMB was terminated.

12 44. Defendant Andrew J. Eschenbach is a resident of the State of  
13 Wisconsin and was last known to reside at 1402 E. 10th St., Merrill, WI 54452. Defendant  
14 Eschenbach was an employee of WMB on and for some time before the Bank Seizure.  
15 During such period of employment, Defendant Eschenbach's principal place of employment  
16 with WMB was Seattle, Washington. Defendant Eschenbach has entered into one or more of  
17 the agreements or plans at issue that specify that Washington law shall govern those  
18 agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
19 Defendant Eschenbach's employment relationship with WMB was terminated.

20 45. Defendant Camille Everett is a resident of the State of California and  
21 was last known to reside at 12306 Clover Ave., Los Angeles, CA 90066. Defendant Everett  
22 was an employee of WMB on and for some time before the Bank Seizure. Defendant Everett  
23 has entered into one or more of the agreements or plans at issue that specify that Washington  
24 law shall govern those agreements or plans. In connection with the Bank Seizure on  
25 September 25, 2008, Defendant Everett's employment relationship with WMB was  
26

1 terminated. Defendant Everett was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D.  
2 Wash. Aug. 30, 2011).

3 46. Defendant Jacqueline Ferguson is a resident of the State of New Jersey  
4 and was last known to reside at 4 Brook Court, Mahwah, NJ 07430. Defendant Ferguson  
5 was an employee of WMB on and for some time before the Bank Seizure. Defendant  
6 Ferguson's employment relationship with WMB was terminated on April 30, 2008.

7 47. Defendant William Finzer is a resident of the State of Washington and  
8 was last known to reside at 9220 SE 59th St., Seattle, WA 98040. Defendant Finzer was an  
9 employee of WMB on and for some time before the Bank Seizure. During such period of  
10 employment, Defendant Finzer's principal place of employment with WMB was Seattle,  
11 Washington. Defendant Finzer has entered into one or more of the agreements or plans at  
12 issue that specify that Washington law shall govern those agreements or plans. In connection  
13 with the Bank Seizure on September 25, 2008, Defendant Finzer's employment relationship  
14 with WMB was terminated.

15 48. Defendant Stephen Fortunato is a resident of the State of New Jersey  
16 and was last known to reside at 31 Governors Lane, Princeton, NJ 08540. Defendant  
17 Fortunato was an employee of WMB on and for some time before the Bank Seizure.  
18 Defendant Fortunato has entered into one or more of the agreements or plans at issue that  
19 specify that Washington law shall govern those agreements or plans. In connection with the  
20 Bank Seizure on September 25, 2008, Defendant Fortunato's employment relationship with  
21 WMB was terminated.

22 49. Defendant Brian T. Foster is a resident of the State of Washington and  
23 was last known to reside at 563 Park Ave. NE, Bainbridge Island, WA 98110. Defendant  
24 Foster was an employee of WMB on and for some time before the Bank Seizure. During  
25 such period of employment, Defendant Foster's principal place of employment with WMB  
26 was Seattle, Washington. Defendant Foster has entered into one or more of the agreements

1 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
 2 connection with the Bank Seizure on September 25, 2008, Defendant Foster's employment  
 3 relationship with WMB was terminated. Defendant Foster was a plaintiff in *Williams v.*  
 4 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

5 50. Defendant Peter Freilinger is a resident of the United Kingdom and  
 6 was last known to reside at 9 Circus St., Greenwich, UK SE10 8SG. Defendant Freilinger  
 7 was an employee of WMB on and for some time before the Bank Seizure. During such  
 8 period of employment, Defendant Freilinger's principal place of employment with WMB  
 9 was Seattle, Washington. Defendant Freilinger has entered into one or more of the  
 10 agreements or plans at issue that specify that Washington law shall govern those agreements  
 11 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant  
 12 Freilinger's employment relationship with WMB was terminated. Defendant Freilinger was  
 13 a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

14 51. Defendant Keith Fukui is a resident of the State of California and was  
 15 last known to reside at 2317 Winged Foot Rd., Half Moon Bay, CA 94019. Defendant  
 16 Fukui was an employee of WMB on and for some time before the Bank Seizure. Defendant  
 17 Fukui has entered into one or more of the agreements or plans at issue that specify that  
 18 Washington law shall govern those agreements or plans. In connection with the Bank  
 19 Seizure on September 25, 2008, Defendant Fukui's employment relationship with WMB was  
 20 terminated. Defendant Fukui was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D.  
 21 Wash. Aug. 30, 2011).

22 52. Defendant Matthew Gaspard is a resident of the State of Washington  
 23 and was last known to reside at 13719 Agate Beach Rd., Anderson Island, WA 98303.  
 24 Defendant Gaspard was an employee of WMB on and for some time before the Bank  
 25 Seizure. During such period of employment, Defendant Gaspard's principal place of  
 26 employment with WMB was Seattle, Washington. Defendant Gaspard has entered into one

1 or more of the agreements or plans at issue that specify that Washington law shall govern  
2 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
3 Defendant Gaspard's employment relationship with WMB was terminated.

4 53. Defendant Michele S. Grau-Iversen is a resident of the State of Nevada  
5 and was last known to reside at 796 Tyner Way, Incline Village, NV 89451. Defendant  
6 Grau-Iversen was an employee of WMB on and for some time before the Bank Seizure.  
7 Defendant Grau-Iversen has entered into one or more of the agreements or plans at issue that  
8 specify that Washington law shall govern those agreements or plans. In connection with the  
9 Bank Seizure on September 25, 2008, Defendant Grau-Iversen's employment relationship  
10 with WMB was terminated. Defendant Grau-Iversen was a plaintiff in *Williams v. FDIC*,  
11 No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

12 54. Defendant Tammy Harrington is a resident of the State of Georgia and  
13 was last known to reside at 405 Squire Drive, Ellenwood, GA 30294. Defendant Harrington  
14 was an employee of WMB on and for some time before the Bank Seizure. Defendant  
15 Harrington has entered into one or more of the agreements or plans at issue that specify that  
16 Washington law shall govern those agreements or plans. In connection with the Bank  
17 Seizure on September 25, 2008, Defendant Harrington's employment relationship with  
18 WMB was terminated.

19 55. Defendant Robert C. Hill is a resident of the State of Texas and was  
20 last known to reside at 7602 Lincoln Court, Colleyville, TX 76034. Defendant Hill was an  
21 employee of WMB on and for some time before the Bank Seizure. Defendant Hill has  
22 entered into one or more of the agreements or plans at issue that specify that Washington law  
23 shall govern those agreements or plans. In connection with the Bank Seizure on September  
24 25, 2008, Defendant Hill's employment relationship with WMB was terminated. Defendant  
25 Hill was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

1           56. Defendant Jeffrey Jones is a resident of the State of California and was  
 2 last known to reside at 5798 Snake Rd., Oakland, CA 94611. Defendant Jones was an  
 3 employee of WMB on and for some time before the Bank Seizure. In connection with the  
 4 Bank Seizure on September 25, 2008, Defendant Jones' employment relationship with WMB  
 5 was terminated.

6           57. Defendant Rajiv Kapoor is a resident of the State of California and  
 7 was last known to reside at 1424 Allanmere Drive, San Ramon, CA 94582. Defendant  
 8 Kapoor was an employee of WMB on and for some time before the Bank Seizure.  
 9 Defendant Kapoor has entered into one or more of the agreements or plans at issue that  
 10 specify that Washington law shall govern those agreements or plans. In connection with the  
 11 Bank Seizure on September 25, 2008, Defendant Kapoor's employment relationship with  
 12 WMB was terminated. Defendant Kapoor was a plaintiff in *Williams v. FDIC*, No. 09-504  
 13 (RAJ) (W.D. Wash. Aug. 30, 2011).

14           58. Defendant Kenneth E. Kido is a resident of the State of Maryland and  
 15 was last known to reside at 5208 Carlton St., Bethesda, MD 20816. Defendant Kido was an  
 16 employee of WMB on and for some time before the Bank Seizure. During such period of  
 17 employment, Defendant Kido's principal place of employment with WMB was Seattle,  
 18 Washington. Defendant Kido has entered into one or more of the agreements or plans at  
 19 issue that specify that Washington law shall govern those agreements or plans. In connection  
 20 with the Bank Seizure on September 25, 2008, Defendant Kido's employment relationship  
 21 with WMB was terminated. Defendant Kido was a plaintiff in *Williams v. FDIC*, No. 09-504  
 22 (RAJ) (W.D. Wash. Aug. 30, 2011).

23           59. Defendant Suzanne R. Lehrberger is a resident of the State of Texas  
 24 and was last known to reside at 303 Robin Hood Court, Irving, TX 75061. Defendant  
 25 Lehrberger was an employee of WMB on and for some time before the Bank Seizure.  
 26 Defendant Lehrberger has entered into one or more of the agreements or plans at issue that



1 specify that Washington law shall govern those agreements or plans. In connection with the  
2 Bank Seizure on September 25, 2008, Defendant Lehrberger's employment relationship with  
3 WMB was terminated.

4           60. Defendant Ronald M. Lowery is a resident of the State of Texas and  
5 was last known to reside at 28007 Carmel Valley, Boerne, TX 78015. Defendant Lowery  
6 was an employee of WMB on and for some time before the Bank Seizure. During such  
7 period of employment, Defendant Lowery's principal place of employment with WMB was  
8 Seattle, Washington. Defendant Lowery has entered into one or more of the agreements or  
9 plans at issue that specify that Washington law shall govern those agreements or plans. In  
10 connection with the Bank Seizure on September 25, 2008, Defendant Lowery's employment  
11 relationship with WMB was terminated. Defendant Lowery was a plaintiff in *Williams v.*  
12 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

13           61. Defendant Marc Malone is a resident of the State of Washington and  
14 was last known to reside at 7510 34th Ave. NE, Seattle, WA 98115. Defendant Malone was  
15 an employee of WMB on and for some time before the Bank Seizure. During such period of  
16 employment, Defendant Malone's principal place of employment with WMB was Seattle,  
17 Washington. Defendant Malone has entered into one or more of the agreements or plans at  
18 issue that specify that Washington law shall govern those agreements or plans. In connection  
19 with the Bank Seizure on September 25, 2008, Defendant Malone's employment relationship  
20 with WMB was terminated.

21           62. Defendant Michelle McCarthy is a resident of the State of Illinois and  
22 was last known to reside at 2550 N. Lakeview Ave., Apt. N406, Chicago, IL 60614.  
23 Defendant Michelle McCarthy was an employee of WMB on and for some time before the  
24 Bank Seizure. During such period of employment, Defendant Michelle McCarthy's principal  
25 place of employment with WMB was Seattle, Washington. Defendant Michelle McCarthy  
26 has entered into one or more of the agreements or plans at issue that specify that Washington



1 law shall govern those agreements or plans. In connection with the Bank Seizure on  
 2 September 25, 2008, Defendant Michelle McCarthy's employment relationship with WMB  
 3 was terminated. Defendant Michelle McCarthy was a plaintiff in *Williams v. FDIC*, No. 09-  
 4 504 (RAJ) (W.D. Wash. Aug. 30, 2011).

5 63. Defendant Susan McCarthy is a resident of the State of South Carolina  
 6 and was last known to reside at 102 Iroquois St., Darlington, SC 29532. Defendant Susan  
 7 McCarthy was an employee of WMB on and for some time before the Bank Seizure. During  
 8 such period of employment, Defendant Susan McCarthy's principal place of employment  
 9 with WMB was Seattle, Washington. In connection with the Bank Seizure on September 25,  
 10 2008, Defendant Susan McCarthy's employment relationship with WMB was terminated.

11 64. Defendant Randy Melby is a resident of the State of Washington and  
 12 was last known to reside at 5802 W. Mercer Way, Mercer Island, WA 98040. Defendant  
 13 Melby was an employee of WMB on and for some time before the Bank Seizure. During  
 14 such period of employment, Defendant Melby's principal place of employment with WMB  
 15 was Seattle, Washington. Defendant Melby has entered into one or more of the agreements  
 16 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
 17 connection with the Bank Seizure on September 25, 2008, Defendant Melby's employment  
 18 relationship with WMB was terminated. Defendant Melby was a plaintiff in *Williams v.*  
 19 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

20 65. Defendant Joe Anthony Melo is a resident of the State of California  
 21 and was last known to reside at 818 Devoto St., Mountain View, CA 94041. Defendant  
 22 Melo was an employee of WMB on and for some time before the Bank Seizure. In  
 23 connection with the Bank Seizure on September 25, 2008, Defendant Melo's employment  
 24 relationship with WMB was terminated.

25 66. Defendant Robert G. Merritt is a resident of the State of California and  
 26 was last known to reside at 1040 Galvin St., Oakland, CA 94602. Defendant Merritt was an

1 employee of WMB on and for some time before the Bank Seizure. Defendant Merritt's  
2 employment relationship with WMB was terminated on October 3, 2005.

3 67. Defendant Rachelle M. Mileur is a resident of the State of Washington  
4 and was last known to reside at 624 14th Ave. East, Seattle, WA 98112. Defendant Mileur  
5 was an employee of WMB on and for some time before the Bank Seizure. During such  
6 period of employment, Defendant Mileur's principal place of employment with WMB was  
7 Seattle, Washington. Defendant Mileur has entered into one or more of the agreements or  
8 plans at issue that specify that Washington law shall govern those agreements or plans. In  
9 connection with the Bank Seizure on September 25, 2008, Defendant Mileur's employment  
10 relationship with WMB was terminated.

11 68. Defendant Thomas E. Morgan is a resident of the State of California  
12 and was last known to reside at 20340 Big Rock Drive, Malibu, CA 90265. Defendant  
13 Morgan was an employee of WMB on and for some time before the Bank Seizure. During  
14 such period of employment, Defendant Morgan's principal place of employment with WMB  
15 was Seattle, Washington. Defendant Morgan has entered into one or more of the agreements  
16 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
17 connection with the Bank Seizure on September 25, 2008, Defendant Morgan's employment  
18 relationship with WMB was terminated.

19 69. Defendant John H. Murphy is a resident of the State of Texas and was  
20 last known to reside at 10043 Bordley, Houston, TX 77042. Defendant Murphy was an  
21 employee of WMB on and for some time before the Bank Seizure. Defendant Murphy has  
22 entered into one or more of the agreements or plans at issue that specify that Washington law  
23 shall govern those agreements or plans. In connection with the Bank Seizure on September  
24 25, 2008, Defendant Murphy's employment relationship with WMB was terminated.  
25 Defendant Murphy was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug.  
26 30, 2011).

70. Defendant Casey Nault is a resident of the State of Illinois and was last known to reside at 619 S. Sunnyside Ave., Elmhurst, IL 60126. Defendant Nault was an employee of WMB on and for some time before the Bank Seizure. During such period of employment, Defendant Nault's principal place of employment with WMB was Seattle, Washington. Defendant Nault has entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Nault's employment relationship with WMB was terminated.

71. Defendant Michael Rapaport is a resident of the State of California and was last known to reside at 744 Duncan St., San Francisco, CA 94131. Defendant Rapaport was an employee of WMB on and for some time before the Bank Seizure. Defendant Rapaport's employment relationship with WMB was terminated on June 2, 2008.

72. Defendant Michael Reynoldson is a resident of the State of Washington and was last known to reside at 4421 51st Ave. NE, Seattle, WA 98105. Defendant Reynoldson was an employee of WMB on and for some time before the Bank Seizure. During such period of employment, Defendant Reynoldson's principal place of employment with WMB was Seattle, Washington. Defendant Reynoldson has entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Reynoldson's employment relationship with WMB was terminated.

73. Defendant Patricia Roberts is a resident of the State of Texas and was last known to reside at 8 Staff Post Rd., Fort Sam Houston, TX 78234. Defendant Roberts was an employee of WMB on and for some time before the Bank Seizure. Defendant Roberts has entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In connection with the Bank

1 Seizure on September 25, 2008, Defendant Roberts' employment relationship with WMB  
2 was terminated.

3 74. Defendant Laura C. Rogers Rodrigues is a resident of the State of  
4 California and was last known to reside at 210 Summerford Circle, San Ramon, CA 94583-  
5 4400. Defendant Rodrigues was an employee of WMB on and for some time before the  
6 Bank Seizure. Defendant Rodrigues has entered into one or more of the agreements or plans  
7 at issue that specify that Washington law shall govern those agreements or plans. In  
8 connection with the Bank Seizure on September 25, 2008, Defendant Rodrigues'  
9 employment relationship with WMB was terminated.

10 75. Upon information and belief, Defendant Luis P. Rodriguez is a  
11 resident of the State of California and resides at 315 Wilde Ave., San Francisco, CA 94134-  
12 2251. Defendant Rodriguez was an employee of WMB on and for some time before the  
13 Bank Seizure. Defendant Rodriguez has entered into one or more of the agreements or plans  
14 at issue that specify that Washington law shall govern those agreements or plans. In  
15 connection with the Bank Seizure on September 25, 2008, Defendant Rodriguez's  
16 employment relationship with WMB was terminated.

17 76. Defendant Foad Said is a resident of the State of New Jersey and was  
18 last known to reside at 1100 83rd St. Unit C2, North Bergen, NJ 07047. Defendant Said was  
19 an employee of WMB on and for some time before the Bank Seizure. Defendant Said has  
20 entered into one or more of the agreements or plans at issue that specify that Washington law  
21 shall govern those agreements or plans. In connection with the Bank Seizure on September  
22 25, 2008, Defendant Said's employment relationship with WMB was terminated.

23 77. Defendant Janquelin F. Schrag is a resident of the State of Washington  
24 and was last known to reside at 23400 39th Ave. W., Brier, WA 98036. Defendant Schrag  
25 was an employee of WMB on and for some time before the Bank Seizure. During such  
26 period of employment, Defendant Schrag's principal place of employment with WMB was

1 Seattle, Washington. Defendant Schrag has entered into one or more of the agreements or  
 2 plans at issue that specify that Washington law shall govern those agreements or plans. In  
 3 connection with the Bank Seizure on September 25, 2008, Defendant Schrag's employment  
 4 relationship with WMB was terminated. Defendant Schrag was a plaintiff in *Williams v.*  
 5 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

6 78. Defendant Patricia Schulte is a resident of the State of California and  
 7 was last known to reside at 5501 Golden Gate Ave., Oakland, CA 94618. Defendant Schulte  
 8 was an employee of WMB on and for some time before the Bank Seizure. During such  
 9 period of employment, Defendant Schulte's principal place of employment with WMB was  
 10 Seattle, Washington. Defendant Schulte has entered into one or more of the agreements or  
 11 plans at issue that specify that Washington law shall govern those agreements or plans. In  
 12 connection with the Bank Seizure on September 25, 2008, Defendant Schulte's employment  
 13 relationship with WMB was terminated.

14 79. Defendant Daniel Shanks is a resident of the State of California and  
 15 was last known to reside at 123 Mission St., San Francisco, CA 94105. Defendant Shanks  
 16 was an employee of WMB on and for some time before the Bank Seizure. Defendant  
 17 Shanks' employment relationship with WMB was terminated on October 1, 2005.

18 80. Defendant Chandan Sharma is a resident of the State of Washington  
 19 and was last known to reside at 5876 NW Lac Leman Drive, Issaquah, WA 98027.  
 20 Defendant Sharma was an employee of WMB on and for some time before the Bank Seizure.  
 21 During such period of employment, Defendant Sharma's principal place of employment with  
 22 WMB was Seattle, Washington. Defendant Sharma has entered into one or more of the  
 23 agreements or plans at issue that specify that Washington law shall govern those agreements  
 24 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Sharma's  
 25 employment relationship with WMB was terminated.

1           81. Defendant Scott Shaw is a resident of the State of Washington and was  
 2 last known to reside at 29826 NE 178th Place, Duvall, WA 98019. Defendant Shaw was an  
 3 employee of WMB on and for some time before the Bank Seizure. During such period of  
 4 employment, Defendant Shaw's principal place of employment with WMB was Seattle,  
 5 Washington. Defendant Shaw has entered into one or more of the agreements or plans at  
 6 issue that specify that Washington law shall govern those agreements or plans. In connection  
 7 with the Bank Seizure on September 25, 2008, Defendant Shaw's employment relationship  
 8 with WMB was terminated.

9           82. Defendant Genevieve Smith is a resident of the State of California and  
 10 was last known to reside at 4465 Ten Mile House TRL, Chico, CA 95928. Defendant Smith  
 11 was an employee of WMB on and for some time before the Bank Seizure. During such  
 12 period of employment, Defendant Smith's principal place of employment with WMB was  
 13 Seattle, Washington. Defendant Smith has entered into one or more of the agreements or  
 14 plans at issue that specify that Washington law shall govern those agreements or plans. In  
 15 connection with the Bank Seizure on September 25, 2008, Defendant Smith's employment  
 16 relationship with WMB was terminated.

17           83. Defendant Jacob E. Sorenson is a resident of the State of California  
 18 and was last known to reside at 1281 Vallejo St., No. 4, San Francisco, CA 94109.  
 19 Defendant Sorenson was an employee of WMB on and for some time before the Bank  
 20 Seizure. Defendant Sorenson has entered into one or more of the agreements or plans at  
 21 issue that specify that Washington law shall govern those agreements or plans. In connection  
 22 with the Bank Seizure on September 25, 2008, Defendant Sorenson's employment  
 23 relationship with WMB was terminated. Defendant Sorensen was a plaintiff in *Williams v.*  
 24 *FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

25           84. Defendant Steven Kenneth Stearns is a resident of the United  
 26 Kingdom and was last known to reside at 106 110 Hallam St., London, UK W1W 5HG.

1 Defendant Stearns was an employee of WMB on and for some time before the Bank Seizure.  
2 During such period of employment, Defendant Stearns' principal place of employment with  
3 WMB was Seattle, Washington. Defendant Stearns has entered into one or more of the  
4 agreements or plans at issue that specify that Washington law shall govern those agreements  
5 or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Stearns'  
6 employment relationship with WMB was terminated.

7 85. Defendant Steven F. Stein is a resident of the State of California and  
8 was last known to reside at 14121 Recuerdo Drive, Del Mar, CA 92014. Defendant Stein  
9 was an employee of WMB on and for some time before the Bank Seizure. During such  
10 period of employment, Defendant Stein's principal place of employment with WMB was  
11 Seattle, Washington. Defendant Stein has entered into one or more of the agreements or  
12 plans at issue that specify that Washington law shall govern those agreements or plans. In  
13 connection with the Bank Seizure on September 25, 2008, Defendant Stein's employment  
14 relationship with WMB was terminated.

15 86. Defendant Mitchell Stevens is a resident of the State of Virginia and  
16 was last known to reside at 3841 N. Tazewell St., Arlington, VA 22207. Defendant Stevens  
17 was an employee of WMB on and for some time before the Bank Seizure. Defendant  
18 Stevens has entered into one or more of the agreements or plans at issue that specify that  
19 Washington law shall govern those agreements or plans. In connection with the Bank  
20 Seizure on September 25, 2008, Defendant Stevens's employment relationship with WMB  
21 was terminated. Defendant Stevens was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ)  
22 (W.D. Wash. Aug. 30, 2011).

23 87. Defendant Richard Strauch is a resident of the State of California and  
24 was last known to reside at 1446 Nighthawk Place, Santa Rosa, CA 95409. Defendant  
25 Strauch was an employee of WMB on and for some time before the Bank Seizure.  
26 Defendant Strauch has entered into one or more of the agreements or plans at issue that



1 specify that Washington law shall govern those agreements or plans. In connection with the  
 2 Bank Seizure on September 25, 2008, Defendant Strauch's employment relationship with  
 3 WMB was terminated.

4 88. Defendant Jane Suchan is a resident of the State of Washington and  
 5 was last known to reside at 6012 34th Ave. NE, Seattle, WA 98115. Defendant Suchan was  
 6 an employee of WMB on and for some time before the Bank Seizure. During such period of  
 7 employment, Defendant Suchan's principal place of employment with WMB was Seattle,  
 8 Washington. Defendant Suchan has entered into one or more of the agreements or plans at  
 9 issue that specify that Washington law shall govern those agreements or plans. In connection  
 10 with the Bank Seizure on September 25, 2008, Defendant Suchan's employment relationship  
 11 with WMB was terminated.

12 89. Defendant Jose O. N. Tagunicar is a resident of the State of California  
 13 and was last known to reside at 123 Mission St., San Francisco, CA 94105. Defendant  
 14 Tagunicar was an employee of WMB on and for some time before the Bank Seizure.  
 15 Defendant Tagunicar's employment relationship with WMB was terminated on May 15,  
 16 2006.

17 90. Defendant Andrew Tauber is a resident of the State of Pennsylvania  
 18 and was last known to reside at 600 Winfield Way, Chester Springs, PA 19425. Defendant  
 19 Tauber was an employee of WMB on and for some time before the Bank Seizure. Defendant  
 20 Tauber has entered into one or more of the agreements or plans at issue that specify that  
 21 Washington law shall govern those agreements or plans. In connection with the Bank  
 22 Seizure on September 25, 2008, Defendant Tauber's employment relationship with WMB  
 23 was terminated. Defendant Tauber was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ)  
 24 (W.D. Wash. Aug. 30, 2011).

25 91. Defendant Radha Thompson is a resident of the State of Texas and  
 26 was last known to reside at 4848 Lemmon Ave., Suite 100, Highland Park, TX 75219.



1 Defendant Thompson was an employee of WMB on and for some time before the Bank  
 2 Seizure. During such period of employment, Defendant Thompson's principal place of  
 3 employment with WMB was Seattle, Washington. Defendant Thompson has entered into  
 4 one or more of the agreements or plans at issue that specify that Washington law shall govern  
 5 those agreements or plans. In connection with the Bank Seizure on September 25, 2008,  
 6 Defendant Thompson's employment relationship with WMB was terminated. Defendant  
 7 Thompson was a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30,  
 8 2011).

9           92. Defendant Ann Tierney is a resident of the State of Washington and  
 10 was last known to reside at 1814 27th Ave. W, Seattle, WA 98199. Defendant Tierney was  
 11 an employee of WMB on and for some time before the Bank Seizure. During such period of  
 12 employment, Defendant Tierney's principal place of employment with WMB was Seattle,  
 13 Washington. Defendant Tierney has entered into one or more of the agreements or plans at  
 14 issue that specify that Washington law shall govern those agreements or plans. In connection  
 15 with the Bank Seizure on September 25, 2008, Defendant Tierney's employment relationship  
 16 with WMB was terminated. Defendant Tierney was a plaintiff in *Williams v. FDIC*, No. 09-  
 17 504 (RAJ) (W.D. Wash. Aug. 30, 2011).

18           93. Defendant David A. Tomlinson is a resident of the State of California  
 19 and was last known to reside at 65 Alpine Terrace, San Francisco, CA 94117. Defendant  
 20 Tomlinson was an employee of WMB on and for some time before the Bank Seizure.  
 21 Defendant Tomlinson has entered into one or more of the agreements or plans at issue that  
 22 specify that Washington law shall govern those agreements or plans. In connection with the  
 23 Bank Seizure on September 25, 2008, Defendant Tomlinson's employment relationship with  
 24 WMB was terminated.

25           94. Defendant Benjamin Turk is a resident of the State of Texas and was  
 26 last known to reside at 29 Wimberley Court, Dallas, TX 75229. Defendant Turk was an

1 employee of WMB on and for some time before the Bank Seizure. Defendant Turk has  
 2 entered into one or more of the agreements or plans at issue that specify that Washington law  
 3 shall govern those agreements or plans. In connection with the Bank Seizure on September  
 4 25, 2008, Defendant Turk's employment relationship with WMB was terminated.

5 95. Defendant John Webber is a resident of the State of Pennsylvania and  
 6 was last known to reside at 603 W. Rosedale Ave., West Chester, PA 19382. Defendant  
 7 Webber was an employee of WMB on and for some time before the Bank Seizure.  
 8 Defendant Webber's employment relationship with WMB was terminated on June 30, 2006.

9 96. Defendant Bruce Weber is a resident of the State of Washington and  
 10 was last known to reside at 23245 Stottlemeyer Rd. NE, Poulsbo, WA 98370. Defendant  
 11 Weber was an employee of WMB on and for some time before the Bank Seizure. During  
 12 such period of employment, Defendant Weber's principal place of employment with WMB  
 13 was Seattle, Washington. Defendant Weber has entered into one or more of the agreements  
 14 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
 15 connection with the Bank Seizure on September 25, 2008, Defendant Weber's employment  
 16 relationship with WMB was terminated.

17 97. Defendant Jeffrey P. Weinstein is a resident of the State of New York  
 18 and was last known to reside at 180 West 20th St., Apt. 14E, New York, NY 10011.  
 19 Defendant Weinstein was an employee of WMB on and for some time before the Bank  
 20 Seizure. In connection with the Bank Seizure on September 25, 2008, Defendant  
 21 Weinstein's employment relationship with WMB was terminated. Defendant Weinstein was  
 22 a plaintiff in *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011).

23 98. Defendant Stephen E. Whittaker is a resident of the State of California  
 24 and was last known to reside at 115 Crane Terrace, Orinda, CA 94563. Defendant  
 25 Whittaker was an employee of WMB on and for some time before the Bank Seizure.  
 26 Defendant Whittaker has entered into one or more of the agreements or plans at issue that

1 specify that Washington law shall govern those agreements or plans. In connection with the  
2 Bank Seizure on September 25, 2008, Defendant Whittaker's employment relationship with  
3 WMB was terminated. Defendant Whittaker was a plaintiff in *Williams v. FDIC*, No. 09-504  
4 (RAJ) (W.D. Wash. Aug. 30, 2011).

5 99. Defendant John F. Woods is a resident of the State of California and  
6 was last known to reside at 655 Sausalito Boulevard, Sausalito, CA 94965. Defendant  
7 Woods was an employee of WMB on and for some time before the Bank Seizure. During  
8 such period of employment, Defendant Woods' principal place of employment with WMB  
9 was Seattle, Washington. Defendant Woods has entered into one or more of the agreements  
10 or plans at issue that specify that Washington law shall govern those agreements or plans. In  
11 connection with the Bank Seizure on September 25, 2008, Defendant Woods' employment  
12 relationship with WMB was terminated.

13 100. Defendant Weijia Wu is a resident of the State of Washington and was  
14 last known to reside at 8927 192nd St. SW, Edmonds, WA 98026. Defendant Wu was an  
15 employee of WMB on and for some time before the Bank Seizure. During such period of  
16 employment, Defendant Wu's principal place of employment with WMB was Seattle,  
17 Washington. Defendant Wu has entered into one or more of the agreements or plans at issue  
18 that specify that Washington law shall govern those agreements or plans. In connection with  
19 the Bank Seizure on September 25, 2008, Defendant Wu's employment relationship with  
20 WMB was terminated.

21 101. Defendant Kathy H. Yeu is a resident of the State of New York and  
22 was last known to reside at 115 E. 90th St., Apt. 7A, New York, NY 10128. Defendant Yeu  
23 was an employee of WMB on and for some time before the Bank Seizure. In connection  
24 with the Bank Seizure on September 25, 2008, Defendant Yeu's employment relationship  
25 with WMB was terminated.  
26

102. Defendant Michael R. Zarro is a resident of the State of Virginia and was last known to reside at 2216 Logan St., Richmond, VA 23235. Defendant Zarro was an employee of WMB on and for some time before the Bank Seizure. During such period of employment, Defendant Zarro's principal place of employment with WMB was Seattle, Washington. Defendant Zarro has entered into one or more of the agreements or plans at issue that specify that Washington law shall govern those agreements or plans. In connection with the Bank Seizure on September 25, 2008, Defendant Zarro's employment relationship with WMB was terminated.

### **JURISDICTION AND VENUE**

103. This action arises under the laws of the United States, including the FDIA and the Federal Regulations. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because there are federal questions regarding interpretation of the FDIA and the Federal Regulations. This Court also has subject matter jurisdiction pursuant to 12 U.S.C. § 1819(b)(2)(A), which provides that "all suits of a civil nature at common law or in equity to which the [Federal Deposit Insurance] Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States." Under sections 702 and 703 of the Administrative Procedure Act, the sovereign immunity of the FDIC and FRB is waived in "[a]n action in a court of the United States seeking relief other than money damages," such as an action for declaratory judgment. 5 U.S.C. §§ 702-03. In addition, the FDIC has explicitly waived sovereign immunity. *See* 12 U.S.C. § 1819 ("[T]he Corporation shall become a body corporate and as such shall have power . . . [t]o sue and be sued, and complain and defend, by and through its own attorneys, in any court of law or equity, State or Federal.").

104. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391(e), which provides that a "civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under

1 color of legal authority, or an agency of the United States, or the United States, may, except  
 2 as otherwise provided by law, be brought in any judicial district in which (A) a defendant in  
 3 the action resides, (B) a substantial part of the events or omissions giving rise to the claim  
 4 occurred, or (C) the plaintiff resides if no real property is involved in the action.” This Court  
 5 has personal jurisdiction over Defendants FDIC and FRB under 28 U.S.C. § 1391(e) and  
 6 because each has offices in Seattle, Washington.

7 105. This Court has personal jurisdiction over Individual Defendants Robert  
 8 Batt, Robert C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Carey M. Brennan, Curt  
 9 Brouwer, John M. Browning, Kimberly A. Cannon, Gennadiy Darakhovsky, Jake D. Domer,  
 10 William Finzer, Brian T. Foster, Matthew Gaspard, Debora D. Horvath, Marc Malone, John  
 11 P. McMurray, Randy Melby, Rachelle M. Mileur, Michael Reynoldson, Janquelin F. Schrag,  
 12 Chandan Sharma, Scott Shaw, Jane Suchan, Craig E. Tall, Ann Tierney, Bruce Weber,  
 13 Weijia Wu, and Michael R. Zarro because they each reside in the Western District of  
 14 Washington. *See* Wash. Rev. Code § 1.48.185 (2003).

15 106. This Court has personal jurisdiction over Individual Defendants Susan  
 16 Allison, Robert N. Batt, Sean Beckett, Robert C. Bjorklund, Mary Beth Davis, Jake Domer,  
 17 Camille Everett, Brian T. Foster, Peter Freiling, Keith O. Fukui, Michelle S. Grau-Iversen,  
 18 Robert C. Hill, Rajiv Kapoor, Kenneth E. Kido, Ronald M. Lowery, Randy Melby, Michelle  
 19 McCarthy, John H. Murphy, Janquelin F. Schrag, Scott Shaw, Jacob E. Sorensen, Mitchell  
 20 Stevens, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, Jeffrey P. Weinstein,  
 21 and Stephen E. Whittaker because they each have purposefully availed themselves of the  
 22 privileges of conducting activities in the Western District of Washington by previously filing  
 23 a related suit therein. *See* Wash. Rev. Code § 1.48.185 (2003); *Williams v. FDIC*, 09-504  
 24 (RAJ) (W.D. Wash. Aug. 30, 2011).

25 107. This Court has personal jurisdiction over Individual Defendants Susan  
 26 C. Allison, Todd H. Baker, Melba Ann Bartels, Robert Batt, Sean Beckett, Robert C.

1 Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Carey M. Brennan, Alfred Brooks, Curt  
 2 Brouwer, John M. Browning, Kimberly A. Cannon, Thomas W. Casey, Gennadiy  
 3 Darakhovskiy, Daryl D. David, Jake D. Domer, Duane Duck, Andrew J. Eschenbach,  
 4 William Finzer, Brian T. Foster, Peter Freiling, Matthew Gaspard, Debora D. Horvath,  
 5 Kenneth Kido, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy,  
 6 John P. McMurray, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, Casey M. Nault,  
 7 Michael Reynoldson, Stephen J. Rotella, David Schneider, Janquelin F. Schrag, Patricia  
 8 Schulte, Chandan Sharma, Scott Shaw, Genevieve Smith, Steven Kenneth Stearns, Steven F.  
 9 Stein, Jane Suchan, Craig E. Tall, Radha Thompson, Ann Tierney, Bruce Weber, Robert J.  
 10 Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro because they each have  
 11 purposefully interjected themselves into Washington affairs by having chosen to maintain an  
 12 employer-employee relationship with a Washington based corporation such as WMI and/or  
 13 WMB, as applicable.

14 108. Each of the Individual Defendants is named as a defendant in this  
 15 action pursuant to the Bankruptcy Order. *See* Bankruptcy Order at 2 (directing WMILT to  
 16 file a declaratory judgment action “naming the FDIC, the FRB, and all claimants”). In  
 17 addition to the bases for personal jurisdiction detailed at paragraphs 105-107 herein, this  
 18 Court also has personal jurisdiction over each Individual Defendant pursuant to and to the  
 19 extent necessary to effectuate the Bankruptcy Order.

## 20 **BACKGROUND**

### 21 **I. THE DOWNGRADE, SEIZURE, AND THE DEBTORS’ BANKRUPTCY** 22 **FILINGS**

23 109. On September 7, 2008, each of WMI and WMB entered into a  
 24 Memorandum of Understanding (each an “MOU”) with the OTS to address certain  
 25 supervisory issues identified by the OTS during its examination of WMI and WMB (as the  
 26 case may be), which examination was completed on June 30, 2008. WMB’s MOU

1 addressed, among other things, WMB's compliance with minimum regulatory capital  
2 requirements and the need to review and significantly improve its overall risk management  
3 structures and controls.

4 110. On or around September 18, 2008, the FDIC assigned WMB a  
5 composite regulatory CAMELS Rating of 4.<sup>3</sup>

6 111. Shortly thereafter, on September 25, 2008, in what is the largest bank  
7 failure in United States history, the Director of the OTS, by order number 2008-36, appointed  
8 the FDIC Receiver, and advised that the FDIC Receiver was immediately taking possession  
9 of WMB's assets.

10 112. Immediately after its appointment as receiver, the FDIC Receiver sold  
11 substantially all of the assets of WMB (the "JPMC Transaction") to JPMC pursuant to that  
12 certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008  
13 (the "Purchase and Assumption Agreement").

14 113. The following day, on September 26, 2008, each of the Debtors filed a  
15 voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, as  
16 amended, in the Bankruptcy Court. As of that date, and until March 16, 2012, WMI owned  
17 all of the outstanding equity of WMB.

18 114. On December 12, 2011, the Debtors filed their *Seventh Amended Joint*  
19 *Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* (as  
20 modified, the "Seventh Amended Plan"). By order, dated February 23, 2012, the Bankruptcy  
21 Court confirmed the Seventh Amended Plan (the "Confirmation Order") and, upon  
22 satisfaction or waiver of the conditions described in the Seventh Amended Plan, the  
23 transactions contemplated by the Seventh Amended Plan were consummated on March 19,

24  
25 <sup>3</sup> The CAMELS Rating System is a bank rating system where bank supervisory authorities rate institutions  
26 according to the following six factors: capital adequacy; asset quality; management quality; earnings; liquidity;  
and sensitivity to market risk. A rank of 1 is best and 5 is worst.



2012. Pursuant to the Seventh Amended Plan, the Confirmation Order and that certain related WMI Liquidating Trust Agreement, effective March 6, 2012, the administration of the Debtors' chapter 11 cases and the responsibility to reconcile and litigate remaining disputed proofs of claim, among other things, were transferred to WMILT.

115. Upon information and belief, in connection with, and upon consummation of, the JPMC Transaction, all employees of WMI (other than one employee) and WMB, as the case may be, who were active employees as of September 25, 2008 were transferred to, and became employees of, JPMC.

116. The Purchase and Assumption Agreement expressly provided that JPMC would not assume certain liabilities, including, among other things, liabilities related to "all employee benefit plans sponsored by the holding company of [WMB]" and "[a]ll management, employment, change-in-control, severance, unfunded deferred compensation and individual consulting agreements or plans (i) between [WMB] and its employees or (ii) maintained by [WMB] on behalf of its employees." *See* Purchase and Assumption Agreement at 34.<sup>4</sup>

## II. THE EMPLOYEE CLAIMS

117. Many former employees of WMB, and certain former employees of WMI, filed proofs of claim against WMI's chapter 11 estate, seeking payment pursuant to the various agreements and plans at issue.

118. Many former employees of WMB, some of whom are Individual Defendants in this action, also filed claims against the FDIC Receiver seeking payments pursuant to employment contracts between such former employees and WMB. The FDIC Receiver denied the employees' claims for severance and other benefits, and certain employees appealed such denial to the United States District Court for the Western District

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<sup>4</sup> A copy of the Purchase and Assumption Agreement is publicly available at [http://www.fdic.gov/about/freedom/Washington\\_Mutual\\_P\\_and\\_A.pdf](http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf).



1 of Washington. *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011),  
 2 *aff'd*, 492 Fed. App'x 796 (9th Cir. 2012). In such litigation, the FDIC Receiver asserted that  
 3 the Automatic Termination Regulation, 12 C.F.R. § 163.39 (formerly § 563.39), rendered the  
 4 various employment contracts at issue unenforceable against the FDIC Receiver. The former  
 5 employees of WMB argued that the rights to payment under the employment contracts at  
 6 issue vested at execution and, therefore, 12 C.F.R. § 163.39 did not operate to automatically  
 7 terminate them. [Dkt. # 114 at pp 9-10]. Relying on “binding Ninth Circuit authority” that  
 8 “squarely contradicted” the former WMB employees’ argument to the contrary, this Court  
 9 held that the rights to payment pursuant to the employment contracts did not fully vest at  
 10 execution. *Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), at 8-9  
 11 (“Because the Plaintiffs are not entitled to payment under employment agreements until there  
 12 is a change in control or the occurrence of some other triggering event(s), the court rejects  
 13 Plaintiffs’ contention that rights to payment vested upon execution.”). Accordingly, this  
 14 Court granted the FDIC Receiver’s motion to dismiss, finding that the Automatic  
 15 Termination Regulation applied and that the employment contracts were unenforceable. *Id.*  
 16 Such decision was affirmed on appeal to the United States Court of Appeals for the Ninth  
 17 Circuit. 492 Fed. App'x 796 (9th Cir. 2012).

18 119. In the Employee Claims, the Individual Defendants seek payments  
 19 pursuant to various employment contracts and employee benefit plans, including:

- 20 A. individual contracts between either WMI or WMB and the respective  
 21 employee entitled “Change in Control Agreement” or “Employment  
 22 Agreement”;
- 23 B. individual contracts between either WMI or WMB and the respective  
 24 employee regarding a “special bonus opportunity”;
- 25 C. individual contracts between WMI and the respective employee  
 26 entitled “Cash Long Term Incentive Award”;
- D. the WaMu Severance Plan (as defined below);
- E. the Equity Incentive Plan (as defined below);

- F. the Washington Mutual, Inc. Executive Target Retirement Income Plan (effective as of January 1, 2004);
- G. the WaMu Executive Officer Severance Plan (effective as of April 1, 2008);
- H. a “Confidential Executive Separation Agreement”; and
- I. individual “Change in Control Employment Agreements” between Providian Financial Corporation and its respective former employee, who ultimately became an employee of WMB.

**A. Change in Control Agreements**

120. Defendants Susan C. Allison, Edward F. Bach, Melba Ann Bartels, Robert N. Batt, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Anthony Joseph Bozzuti, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Gennadiy Darakhovskiy, Mary Beth Davis, Andrew J. Eschenbach, William Finzer, Stephen Fortunato, Brian T. Foster, Keith O. Fukui, Matthew Gaspard, Michele S. Grauverson, Robert C. Hill, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Januelin F. Schrag, Patricia Schulte, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, and Michael R. Zarro have asserted claims pursuant to individual agreements with WMB entitled “Employment Agreement” or “Change in Control Agreement” (each a “WMB CIC Agreement,” and, collectively, the “WMB CIC Agreements”).<sup>5</sup>

121. Defendants Todd H. Baker, Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider,

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<sup>5</sup> A sample WMB CIC Agreement is annexed hereto as **Exhibit D**.

1 Craig E. Tall, Anthony F. Vuoto, and Robert J. Williams, Jr. have asserted claims pursuant to  
 2 individual agreements with WMI entitled “Employment Agreement” or “Change in Control  
 3 Agreement” (each a “WMI CIC Agreement” and, collectively, the “WMI CIC Agreements,”  
 4 and, together with the WMB CIC Agreements, the “CIC Agreements”).<sup>6</sup>

5 122. The CIC Agreements set forth the terms and conditions of employment  
 6 and provide for extraordinary payments in the form of a “change in control” payment. With  
 7 certain limited exceptions, employees of WMI entered into a CIC Agreement with WMI, and  
 8 employees of WMB entered into a CIC Agreement with WMB. Although the WMI CIC  
 9 Agreements contain certain provisions that are different from the WMB CIC Agreements,  
 10 each CIC Agreement generally provides for “change in control” payments to be paid to the  
 11 employee if, upon or within 2 or 3 years after a “change in control” occurs, either (a) the  
 12 employee’s employment is terminated without “cause,” or (b) the employee resigns for  
 13 “good reason” and no reason exists for either WMI or WMB, as applicable, to terminate the  
 14 employee for “cause.”

15 123. Both forms of CIC Agreement contain the same definition of “change  
 16 in control.” *See* Sample WMB CIC Agreement §§ 5(g)(3), (5), a copy of which is annexed  
 17 hereto as **Exhibit D**; Sample WMI CIC Agreement §§ 11(c), (e), a copy of which is annexed  
 18 hereto as **Exhibit E**. The Individual Defendants have previously alleged that their “change  
 19 in control” benefits were triggered as a result of the Bank Seizure and/or JPMC Transaction,  
 20 pursuant to one or both of the following definitions of “change in control” in their respective  
 21 agreements:

22 (c) The good-faith determination by the Board that any Person<sup>7</sup> or group  
 23 (other than a Subsidiary or any employee benefit plan of Washington Mutual

24 <sup>6</sup> A sample WMI CIC Agreement is annexed hereto as **Exhibit E**.

25 <sup>7</sup> Pursuant to the CIC Agreements, “Person” means “any individual, corporation, company, voluntary  
 26 association, partnership, limited liability company, joint venture, trust, unincorporated organization of  
 government (or any agency, instrumentality or political subdivision thereof).” Sample WMI CIC Agreement  
 § 11(f); Sample WMB CIC Agreement § 5(h)(1).

or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of Washington Mutual, whether through the ability to exercise voting power, by contract or otherwise; or

(e) The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

*See* Sample WMI CIC Agreement § 11(c), (e).

124. Pursuant to the CIC Agreements, to the extent (a) a "change in control" occurs and (b) either of the termination or resignation conditions have been satisfied, then the employee is entitled to receive "within five business days after the effective date of such termination or resignation . . . , a lump sum equal to [two or] three times employee's annual compensation" subject to certain offsets. *See* Sample WMI CIC Agreement § 6(c); Sample WMB CIC Agreement § 5(c).

**B. Alternate or Contingent Claim for Severance Pursuant to Rotella CIC Agreement**

125. One Individual Defendant, Stephen J. Rotella, also has asserted an alternate or contingent claim for severance payments pursuant to the non-"change in control" terms of Defendant Rotella's WMI CIC Agreement (the "Rotella CIC Agreement").<sup>8</sup> Whereas the "change in control" provisions of the Rotella CIC Agreement provide for a change in control payment equal to three times Defendant Rotella's annual compensation, the base severance provisions provide for severance in the amount of two times Defendant Rotella's annual compensation for termination without "cause" unrelated to a "change in control." *See* Rotella CIC Agreement § 6(h). Thus, Defendant Rotella has asserted an alternate or contingent claim for severance pursuant to the base severance provisions of the

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<sup>8</sup> The Rotella CIC Agreement is annexed hereto as **Exhibit F**.

1 Rotella CIC Agreement to the extent the Bankruptcy Court determines that he is not entitled  
2 to the “change of control” payment pursuant thereto.

3 **C. Retention Bonus Agreements**

4 126. Defendants Edward F. Bach, Melba Ann Bartels, Henry J. Berens,  
5 Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Curt  
6 Brouwer, Kimberly A. Cannon, Mary Beth Davis, William Finzer, Brian T. Foster, Peter  
7 Freilinger, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Kenneth E. Kido,  
8 Michelle McCarthy, Susan McCarthy, Rachelle M. Mileur, Thomas E. Morgan, Casey Nault,  
9 Michael Reynoldson, Patricia Roberts, Chandan Sharma, Genevieve Smith, Jacob E.  
10 Sorenson, Steven F. Stein, Richard Strauch, Jane Suchan, David A. Tomlinson, Bruce  
11 Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, John F. Woods, Weijia Wu, and Michael  
12 R. Zarro have asserted claims pursuant to individual memo agreements with WMB providing  
13 for a “special bonus opportunity” (each a “WMB Retention Bonus Agreement,” and,  
14 collectively, the “WMB Retention Bonus Agreements”).<sup>9</sup>

15 127. Defendants Todd H. Baker, Daryl D. David, Debora D. Horvath, John  
16 P. McMurray, David Schneider, Anthony F. Vuoto, and Robert J. Williams, Jr., have asserted  
17 claims pursuant to individual memo agreements with WMI providing for a “special bonus  
18 opportunity” (each a “WMI Retention Bonus Agreement,” and, collectively, the “WMI  
19 Retention Bonus Agreements,” and, together with the WMB Retention Bonus Agreements,  
20 the “Retention Bonus Agreements”).<sup>10</sup>

21 128. The Retention Bonus Agreements were issued by either WMI or  
22 WMB, as applicable, to their respective employees, and offered a bonus payment for the  
23 employee’s continued employment through a date certain. The Retention Bonus Agreements  
24

25 <sup>9</sup> A sample WMB Retention Bonus Agreement is annexed hereto as **Exhibit G**.

26 <sup>10</sup> A sample WMI Retention Bonus Agreement is annexed hereto as **Exhibit H**.

1 vary in form and language, but each requires the employee to remain employed for a certain  
 2 period of time, after which the employee is eligible to receive the bonus payment. In many  
 3 of the Retention Bonus Agreements, the employment requirement is waived upon the  
 4 occurrence of certain conditions, including in the event of a “change in control,” as defined  
 5 in the employee’s applicable CIC Agreement.

6 **D. Cash Long Term Incentive Agreements**

7 129. Defendants Susan C. Allison, Gennadiy Darakhovskiy, Marc Malone,  
 8 Michelle McCarthy, John P. McMurray, Chandan Sharma, Mitchell Stevens, Richard  
 9 Strauch, Andrew Tauber, Radha Thompson, and Ann Tierney have asserted claims pursuant  
 10 to memo notices that provided for a “Cash Long-Term Incentive Award” (the “Cash LTI  
 11 Agreements”).<sup>11</sup>

12 130. The Cash LTI Agreements were issued by WMI and have identical  
 13 substantive provisions and vesting dates, but provide for varying payments. The payments  
 14 vest over a period of three years, with an installment payment becoming due at each  
 15 anniversary date, and provide, in relevant part, that an employee must be employed on each  
 16 applicable anniversary date in order to receive each portion of the payment.

17 131. The Cash LTI Agreements further provide that the vesting and  
 18 payments would be accelerated upon the occurrence of a “change in control,” as defined in  
 19 the employee’s respective CIC Agreement.

20 **E. WaMu Severance Plan**

21 132. Defendants Susan C. Allison, Sean Beckett, Henry J. Berens, Robert  
 22 C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Kimberly A. Cannon, Mary Beth  
 23 Davis, Duane Duck, Camille Everett, Michele S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor,  
 24 Marc Malone, Thomas E. Morgan, John H. Murphy, Casey Nault, Michael Reynoldson,  
 25

26 <sup>11</sup> A sample Cash LTI Agreement is annexed hereto as **Exhibit I**.

1 Laura C. Rogers Rodrigues, Luis P. Rodriguez, Chandan Sharma, Scott Shaw, Genevieve  
 2 Smith, Richard Strauch, Radha Thompson, Ann Tierney, David A. Tomlinson, Stephen E.  
 3 Whittaker, Weijia Wu, and Michael R. Zarro have asserted claims and, in some cases,  
 4 alternate or contingent claims, pursuant to the WaMu Severance Plan (Amended and  
 5 Restated Effective January 1, 2008) (as terminated effective September 25, 2008) (the  
 6 “WaMu Severance Plan”),<sup>12</sup> which provides payments to eligible employees “of Washington  
 7 Mutual, Inc. and its Affiliates,” in the event of a “job elimination,” as defined therein.

8 133. In general, the WaMu Severance Plan provided that, in the event of a  
 9 job elimination (as defined therein), participants who met the requirements under the WaMu  
 10 Severance Plan were eligible to receive certain defined severance payments. *See* WaMu  
 11 Severance Plan § 3.2.

12 134. In particular, the WaMu Severance Plan provides for two types of  
 13 severance payments: (1) “change in control” severance benefits, for Level 6 employees only,  
 14 which are triggered upon termination of employment following the occurrence of a “change  
 15 in control;” and (2) standard or base severance benefits based on the employee’s length of  
 16 service with the applicable entity, which benefits are triggered only if the employee’s  
 17 position was eliminated “because of corporate restructuring, downsizing, or a reduction in  
 18 force.” *See id.*

19 **F. Equity Incentive Plan**

20 135. Defendants Susan C. Allison, Edward F. Bach, Todd H. Baker, Melba  
 21 Ann Bartels, Robert N. Batt, David Beck, Sean Beckett, Henry J. Berens, Bruce W. Bivert,  
 22 Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Alfred Brooks, Curt  
 23 Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan  
 24 Carlisle, Thomas W. Casey, Daryl D. David, Mary Beth Davis, Jake D. Domer, Duane Duck,  
 25

26 <sup>12</sup> A copy of the WaMu Severance Plan is annexed hereto as **Exhibit J**.



Andrew J. Eschenbach, Camille Everett, Jacqueline Ferguson, William Finzer, Stephen Fortunato, Brian T. Foster, Peter Freiling, Keith O. Fukui, Matthew Gaspard, Michele S. Grau-Iversen, Tammy Harrington,<sup>13</sup> Robert C. Hill, Debora D. Horvath, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy, John P. McMurray, Randy Melby, Joe Anthony Melo, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Patricia Roberts, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Foad Said, David Schneider, Janquelin F. Schrag, Patricia Schulte, Sharma Chandan, Scott Shaw, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Steven F. Stein, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Benjamin Turk, Anthony F. Vuoto, Bruce Weber, Stephen E. Whittaker, Robert J. Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro have asserted claims pursuant to the Washington Mutual, Inc. Amended and Restated 2003 Equity Incentive Plan (the “Equity Incentive Plan”),<sup>14</sup> pursuant to which certain employees received, among other things, awards of common stock subject to various restrictions or conditions (the “Restricted Stock”).

136. The Equity Incentive Plan contains an automatic vesting provision which provides that, upon the occurrence of a “Company Transaction,” certain stock benefits

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<sup>13</sup> Three (3) of the Individual Defendants (Tammy Harrington, Benjamin Turk and Foad Said) did not file proofs of claim in the Debtors’ bankruptcy cases. These Individual Defendants hold disputed equity interests in the Debtors’ estates relating to restricted stock awards received pursuant to the Equity Incentive Plan. Because such individuals would have been equity holders in WMI, they were not required to file proofs of equity interests in the chapter 11 cases. The Trust objected to the disputed equity interests of these Individual Defendants, along with approximately three thousand (3,000) other individuals, in the *WMI Liquidating Trust’s Eighty-Eighth Omnibus Objection to Disputed Equity Interests* (the “Eighty-Eighth Omnibus Objection”). Individuals listed therein were deemed to have objected to the Eighty-Eighth Omnibus Objection and were not required to respond to such objection unless they wanted to participate actively in the litigation. Individual Defendants Harrington, Turk and Said filed responses to the Eighty-Eighth Omnibus Objection, indicating a desire to participate in the bankruptcy litigation and, accordingly, are named herein pursuant to the Bankruptcy Order.

<sup>14</sup> A copy of the Equity Incentive Plan is annexed hereto as **Exhibit K**.

would automatically vest in their holder. *See* Equity Incentive Plan §§ 15.3.1, 15.3.2. The term “Company Transaction” is defined in the Equity Incentive Plan as “(a) a merger or consolidation of the Company with or into any other company or other entity or (b) a sale, lease, exchange or other transfer in one transaction or a series of related transactions undertaken with a common purpose of all or substantially all of the Company’s then outstanding securities or all or substantially all of the Company’s assets . . . .” *Id.* § 2. The Equity Incentive Plan further provides that, to the extent a participant has a CIC Agreement, “Company Transaction” shall have the same definition of “change in control” as contained in the respective CIC Agreement. *Id.*

**G. Washington Mutual, Inc. Executive Target Retirement Income Plan**

137. Defendants Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider, Craig E. Tall, and Anthony F. Vuoto have asserted claims pursuant to the Washington Mutual, Inc. Executive Target Retirement Income Plan (the “ETRIP”),<sup>15</sup> an unfunded plan designed primarily to provide deferred compensation payments to a select group of management and highly compensated employees.

138. The ETRIP provides that, upon a “change in control,” as defined in the employee’s respective CIC Agreement, the eligible employee is automatically credited with additional years of seniority for purposes of vesting benefits. *See* ETRIP § 3.5. Thus, to the extent a “change in control” is deemed to have occurred, such event would accelerate the vesting of an employee’s final payment pursuant to the ETRIP. *Id.*

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<sup>15</sup> A copy of the ETRIP is annexed hereto as **Exhibit L**.

1                   **H.       WaMu Executive Officer Severance Plan**

2                   139. Defendants Todd H. Baker, Alfred Brooks, Thomas W. Casey, Daryl  
3 D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider,  
4 Anthony F. Vuoto, and Robert J. Williams, Jr., who were all former employees of WMI,  
5 have asserted alternate or contingent claims pursuant to the WaMu Executive Officer  
6 Severance Plan (effective as of April 1, 2008) (the “Executive Officer Severance Plan” or  
7 “EOSP”).<sup>16</sup> An executive’s entitlement to payments pursuant to the EOSP is mutually  
8 exclusive with an entitlement to payments pursuant to the executive’s WMI CIC Agreement.  
9 Therefore, the alternate claims allege that, in the event the Bankruptcy Court finds that the  
10 executives are not entitled to their “change in control” payment pursuant to the terms of their  
11 respective individual WMI CIC Agreements, the executives are entitled to recover severance  
12 benefits pursuant to the terms of the EOSP. *See* EOSP § 2.

13                   140. The EOSP provides that an “Eligible Executive” shall be paid a cash  
14 severance equal to one and one-half times the sum of the executive’s annual base salary plus  
15 certain additional benefits, as set forth therein. *See* EOSP § 3.1

16                   **I.       Confidential Executive Separation Agreement**

17                   141. One Defendant, John Michael Browning, has asserted a claim pursuant  
18 to an agreement entitled “Confidential Executive Separation Agreement.”<sup>17</sup> Mr. Browning  
19 has alleged that he entered into this agreement in anticipation of the termination of his  
20 employment as a result of a reduction in force of the company.

21                   142. Pursuant to the agreement, in exchange for Mr. Browning granting  
22 certain releases, Mr. Browning would be entitled to receive a separation payment composed  
23  
24

25                   <sup>16</sup> A copy of the Executive Officer Severance Plan is annexed hereto as **Exhibit M**.

26                   <sup>17</sup> Mr. Browning’s proof of claim, which contains the related contracts, is annexed hereto as **Exhibit N**.

1 of the equivalent of twenty-four (24) weeks of regular salary, plus a combined leadership and  
2 retention bonus.

3 **J. Providian Agreements**

4 143. Defendants Robert C. Boxberger, Mary Beth Davis, Michele S. Grau-  
5 Iversen, Robert C. Hill, Robert G. Merritt, Michael Rapaport, Laura C. Rogers Rodrigues,  
6 Luis P. Rodriguez, Daniel Shanks, Richard Strauch, Jose O. N. Tagunicar, David A.  
7 Tomlinson, John Webber, Stephen E. Whittaker, and Kathy H. Yeu were former employees  
8 of Providian Financial Corporation (“PFC”) and/or one of its subsidiaries prior to October 1,  
9 2005 (collectively, the “Providian Defendants”).

10 144. On or around October 1, 2005, New American Capital, Inc. (“NACI”),  
11 a former subsidiary of WMI, acquired PFC. Prior to the acquisition of PFC, PFC owned all  
12 of the stock of Providian National Bank (“PNB”). As a result of the acquisition, NACI  
13 owned all of the stock of PNB and, immediately after NACI acquired PFC, PNB merged  
14 with and into WMB. After the October 2005 transactions (collectively, the “Providian  
15 Merger”), the Providian Defendants became employees of WMB and worked in WMB’s  
16 California offices in the business division referred to as “Card Services.”

17 145. Prior to the Providian Merger, the Providian Defendants entered into  
18 certain employment contracts entitled “Change of Control Employment Agreement” with  
19 PFC (each, a “Providian Agreement” and, collectively, the “Providian Agreements”).<sup>18</sup> The  
20 Providian Agreements were for purposes of ensuring that, upon a “change of control” at PFC,  
21 the Providian employees would be entitled to certain payments. The “Effective Date” of the  
22 Providian Agreements is the first day on which a “Change in Control” at PFC occurs. *See*  
23 *Sample Providian Agreement* §§ 1(a), 2.

24  
25  
26 <sup>18</sup> A sample Providian Agreement is annexed hereto as **Exhibit O**.

146. The Providian Defendants assert that WMI (and, therefore, WMILT) is liable for certain payments pursuant to the Providian Agreements because, among other things, WMI assumed the Providian Agreements as part of the Providian Merger or, alternatively, WMI guaranteed payments pursuant to the Providian Agreements according to the terms thereof.

### III. THE DEBTORS' OBJECTIONS

147. Beginning in June 2009, the Debtors objected to certain of the Employee Claims in the *Debtors' Fifth Omnibus (Substantive) Objection to Claims* (the "Fifth Omnibus Objection") and the *Debtors' Sixth Omnibus (Substantive) Objection to Claims* (the "Sixth Omnibus Objection"). The Fifth and Sixth Omnibus Objections assert that WMI is not liable for agreements entered into by and between WMB and employees of WMB and, even if WMI were liable, no "change in control" had occurred to trigger WMI's alleged obligation to make the payments claimed.

148. On August 15, 2012, WMILT filed the *WMI Liquidating Trust's Seventy-Ninth Omnibus (Substantive) Objection to Claims* (the "Seventy-Ninth Omnibus Objection"), *WMI Liquidating Trust's Eightieth Omnibus (Substantive) Objection to Claims* (the "Eightieth Omnibus Objection"), *WMI Liquidating Trust's Eighty-First Omnibus (Substantive) Objection to Claims* (the "Eighty-First Omnibus Objection"), and *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims* (the "Eighty-Second Omnibus Objection"). The Seventy-Ninth, Eightieth, Eighty-First and Eighty-Second Omnibus Objections assert, among other things, that WMI is not liable for agreements entered into by and between WMB and employees of WMB and, even if WMI were liable, no "change in control" had occurred to trigger WMI's alleged obligation to make the payments claimed.

149. On September 17, 2012, WMILT filed the *WMI Liquidating Trust's Eighty-Fourth Omnibus (Substantive) Objection to, Among Others, Change in Control*

1 *Claims* (the “Eighty-Fourth Omnibus Objection”), *WMI Liquidating Trust’s Eighty-Fifth*  
 2 *Omnibus (Substantive) Objection to Change in Control Claims* (the “Eighty-Fifth Omnibus  
 3 *Objection*”) and *WMI Liquidating Trust’s Eighty-Eighth Omnibus (Substantive) Objection to*  
 4 *Disputed Equity Interests* (the “Eighty-Eighth Omnibus Objection” and, together with the  
 5 Fifth Omnibus Objection, Sixth Omnibus Objection, Seventy-Ninth Omnibus Objection,  
 6 Eightieth Omnibus Objection, Eighty-First Omnibus Objection, Eighty-Second Omnibus  
 7 Objection, Eighty-Fourth Omnibus Objection and Eighty-Fifth Omnibus Objection, the  
 8 “Omnibus Objections”). The Eighty-Fourth and Eighty-Fifth Omnibus Objections objected  
 9 to the applicable claims on the basis that, among other things, no “change in control” had  
 10 occurred to trigger the payments sought.

11           150. Approximately ninety-two (92) former employees filed responses to  
 12 the Omnibus Objections. On October 15, 2012, the Bankruptcy Court entered the *Agreed*  
 13 *Order Establishing Procedures and Deadlines Concerning Hearing on Employee Claims and*  
 14 *Discovery in Connection Therewith*, which provided for, among other things, the  
 15 consolidation of the litigation with respect to all of the Omnibus Objections, and set forth  
 16 procedures with respect to a consolidated hearing or series of hearings to consider the relief  
 17 requested in the Omnibus Objections.

18           151. On February 19, 2013, WMILT filed the *WMI Liquidating Trust’s*  
 19 *Motion for Leave to Amend the Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-*  
 20 *Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth Omnibus Objections to Claims* (the  
 21 “Motion to Amend”). The Motion to Amend sought to amend the Omnibus Objections to  
 22 assert, among other things, that WMILT is not liable for the Employee Claims because such  
 23 claims seek payments that constitute impermissible “golden parachute payments” pursuant to  
 24 the Golden Parachute Regulations and are unenforceable pursuant to the Automatic  
 25 Termination Regulation, as discussed in greater detail below.

152. In their opposition to the Motion to Amend and contrary to the subsequent FDIC Determination, certain Individual Defendants claimed that the Golden Parachute Regulations did not apply to the agreements and plans at issue. *See Joint Objection to WMI Liquidating Trust's Motion to Amend Fifth, Sixth, Seventy-Ninth, Eightieth, Eighty-First, Eighty-Second, Eighty-Fourth, Eighty-Fifth, and Eighty-Eighth Omnibus Objections to Claims* (the "Claimants' Joint Objection"). Specifically, these Individual Defendants claimed the Golden Parachute Regulations do not "provide WMILT with standing to enforce the federal statutory and regulatory law prohibiting golden parachute payments." Claimants' Joint Objection at 10. Moreover, they claimed that, as of the time of the Bank Seizure, WMI ceased to be covered by the Golden Parachute Regulations and, therefore, WMILT is not prohibited from making payments pursuant to the agreements and plans at issue. *Id.* at 10-11.

153. On August 23, 2013, the Bankruptcy Court denied WMILT's Motion to Amend on the grounds that, *inter alia*, the "amendment would be futile because any decision on the legal issue would not be binding on the FDIC and FRB because they are not parties to the Omnibus Objections." *See* Bankruptcy Order at 2, annexed hereto as **Exhibit A**. The Bankruptcy Court then ordered WMILT to file this declaratory judgment action against the FDIC, FRB, and all claimants. *See id.*<sup>19</sup>

#### IV. THE FDIC REGULATIONS

##### A. 12 C.F.R. Part 359.2 (the Golden Parachute Regulations)

154. Each of the Individual Defendant's claims arising out of each of the respective contracts and benefits plans, as the case may be, are barred by the Golden Parachute Regulations.

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<sup>19</sup> Discovery with respect to the underlying litigation in the Bankruptcy Court remains ongoing, but no trial date has been set.



155. The Golden Parachute Regulations, a copy of which is annexed hereto as **Exhibit P**, provide that “[n]o insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment, except as provided in this part.” 12 C.F.R. § 359.2.

156. The Golden Parachute Regulations prohibit insured depository institutions, like WMB, and depository institution holding companies, like WMI, from making certain payments, absent specific regulatory approval, to an IAP<sup>20</sup> (*i.e.*, each of the named Individual Defendants) upon or after (or in contemplation of) the termination of the IAP’s employment or affiliation with the depository institution or holding company, where the requirement to make such payments is triggered by or contingent on the termination of the IAP and such entity is in financial distress at the time of such termination.

157. The purpose of the Golden Parachute Regulations is to, among other things, “prevent the improper disposition of institution assets and to protect the financial soundness of insured depository institutions, depository institution holding companies, and the federal deposit insurance funds,” and to prevent windfall payments to those who may be responsible for, or who participated in risky business activities that contributed to, the troubled condition or failure of financial institutions. *See* Regulation of Golden Parachute and Other Benefits Which May Be Subject to Misuse, Final Rule, 61 Fed. Reg. 5927-27 (Feb. 15, 1996).

158. The Golden Parachute Regulations define what constitutes a “golden parachute payment” in a five-part test as: (1) “any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution [such as WMB] or an affiliated depository institution holding company [such as WMI]”; (2) “for the benefit of any current or former IAP” (such as the named Individual Defendants); (3) which

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<sup>20</sup> Pursuant to 12 C.F.R. § 359.1(h)(1), “institution affiliated party” means, inter alia, “[a]ny director, officer, employee . . . of, or agent for, an insured depository institution holding company.”

obligation is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the institution or holding company; (4) is received on or after, or is made in contemplation of certain enumerated Distress Events (as defined below), including, among other things, the insolvency of the insured depository institution or depository institution holding company or the appointment of a receiver; and (5) the termination is at a time when the entity satisfies a Distress Event. *See* 12 C.F.R. § 359.1(f).

159. In particular, a payment constitutes a prohibited "golden parachute payment" if the payment is made or the agreement is received on or after, or is made in contemplation of any of the following events (each a "Distress Event" and, collectively, the "Distress Events"):

- The insolvency (or similar event) of the depository institution or the bankruptcy or insolvency (or similar event) of the depository institution holding company, *see* 12 C.F.R. § 359.1(f)(1)(ii)(A);
- The appointment of a receiver or conservator for the insured depository institution, *see* 12 C.F.R. § 359.1(f)(1)(ii)(B);
- A determination by the appropriate federal banking agency that the depository institution or its holding company is in a "troubled condition," *see* 12 C.F.R. § 359.1(f)(1)(ii)(C);
- The depository institution or the depository institution holding company is assigned a composite rating of 4 or 5 by the appropriate federal banking agency, *see* 12 C.F.R. § 359.1(f)(1)(ii)(D); or
- The insured depository institution is subject to a proceeding to terminate or suspend deposit insurance, *see* 12 C.F.R. § 359.1(f)(1)(ii)(E).

160. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4. *See* the FDIC Determination, a copy of which is annexed hereto as **Exhibit B**; 12 C.F.R. § 359.1(f)(1)(ii)(D). Moreover, an entity with a composite CAMELS Rating of "4" is

officially designated as “troubled.” *See* 12 C.F.R. § 359.1(f)(1)(ii)(C); 12 C.F.R. § 303.101(c); *see also* the FDIC Determination, a copy of which is annexed hereto as **Exhibit B**.

161. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

162. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. *See* § 359.1(f)(1)(ii)(A).

163. As described more fully in paragraph 169 *infra*, and as set forth in the FDIC Determination, the FDIC has found that a Distress Event occurred because, *inter alia*, FDIC records show that WMB was assigned a composite “4” rating, and, therefore, officially designated “troubled,” as of September 18, 2008, and WMI filed for Chapter 11 bankruptcy on September 25, 2008. *See* the FDIC Determination, a copy of which is annexed hereto as **Exhibit B**. The FDIC further found that the agreements and plans at issue fall within the scope of the Golden Parachute Regulations and WMILT is prohibited from making payments pursuant to the agreements or plans without prior regulatory approval. *Id.*

**B. 12 C.F.R. § 163.39 (the Automatic Termination Regulation)**

164. As this Court has found previously, certain of the contracts and benefit plans that give rise to certain of the Individual Defendants’ claims automatically terminated upon the appointment of the FDIC as the receiver for WMB pursuant to the Automatic Termination Regulation.

165. The Automatic Termination Regulation provides that an employment contract between a savings association and its officers and other employees must provide

1 that, “[i]f the savings association is in default [as defined in section 3(x)(1) of the FDIA], all  
 2 obligations under the contract shall terminate as of the date of default . . .” *See* 12 C.F.R.  
 3 § 163.39(b)(4) (a copy of which is annexed hereto as **Exhibit Q**). Such regulation is  
 4 incorporated into employment agreements between the parties regardless of whether it is  
 5 expressly set forth in the written document. *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D.  
 6 Wash. Aug. 30, 2011) (explaining that 12 C.F.R. § 563.39(b)(5), now 12 C.F.R. § 163.39,  
 7 will be implied in employment contracts of insured institutions to the extent they are not  
 8 expressly included in such contracts), *aff’d*, 492 Fed. App’x. 796 (9th Cir. 2012). Thus, as  
 9 this Court in *Williams* found, under the Automatic Termination Regulation, any employment  
 10 contract obligation between a savings association and its employees, such as the contracts for  
 11 which the Individual Defendants assert WMILT is vicariously liable, automatically  
 12 terminates upon the date of default of the savings association. *See Williams v. FDIC*, No. 09-  
 13 504 (RAJ) at 8.

14 166. Like the Golden Parachute Regulations, the Automatic Termination  
 15 Regulation seeks to prevent employees of a failed or failing financial institution from  
 16 receiving a windfall at the expense of creditors and depositors.

#### 17 **V. THE FDIC DETERMINATION THAT THE GOLDEN PARACHUTE** 18 **REGULATIONS PROHIBIT PAYMENT TO INDIVIDUAL DEFENDANTS**

19 167. In an effort to resolve the outstanding claims necessary to close the  
 20 Debtors’ chapter 11 cases, WMILT executed stipulations (the “Settlement Agreements”)  
 21 with thirty-two (32) individual former employees (the “Settling Claimants”) to settle their  
 22 respective Employee Claims, which Settlement Agreements are, by their terms, expressly  
 23 subject to the prior approval by the FDIC and FRB of the payments contemplated thereunder.

168. On May 30, 2013, WMILT submitted a request to the FDIC with respect to the thirty-two (32) Settlement Agreements, seeking a determination as to whether the Golden Parachute Regulations applied to certain contracts and benefits plans subject thereto (the “May 30 Letter”). Specifically, WMILT sought a determination as to whether the Golden Parachute Regulations applied to payments made pursuant to:

- the WMB CIC Agreements;
- certain WMB Retention Bonus Agreements;
- the Cash Long Term Incentive Agreements;
- the WaMu Severance Plan; and
- the Equity Incentive Plan.

169. As discussed *supra* in paragraph 163, and as set forth in the FDIC Determination, the FDIC determined that (i) a Distress Event (as defined above) had occurred, (ii) any payments made to the Settling Claimants pursuant to the above-referenced agreements were subject to the Golden Parachute Regulation,<sup>21</sup> and (iii) such payments are prohibited absent specific, individual, case-by-case regulatory approval. *See* FDIC Determination, a copy of which is annexed hereto as **Exhibit B**.

170. Additionally, the FDIC stated that WMILT must file a formal application prior to making any golden parachute payments pursuant to:

- the Confidential Executive Separation Agreement;
- the ETRIP; and
- the EOSP.

171. Moreover, with respect to all eight (8) above-referenced plans and agreements, the FDIC advised WMILT that, absent prior regulatory approval from the FDIC and FRB, “any current or future settlements of golden parachute payments would result in a violation of Part 359 and potential civil money penalties.” *Id.*

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<sup>21</sup> The FDIC Determination is annexed hereto as **Exhibit B**.

172. The Court should give deference to the FDIC Determination. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984); *Bear Lake Watch, Inc. v. FERC*, 324 F.3d 1071, 1073 (9th Cir. 2003) (noting “deference to an agency’s reasonable interpretation of a statutory provision where Congress has left the question to the agency’s discretion”). Indeed, the Ninth Circuit grants substantial deference to an agency’s interpretation of its own regulations. *See Forest Guardians v. U.S. Forest Serv.*, 329 F.3d 1089, 1097 (9th Cir. 2003) (“substantial deference”); *Wards Cove Packing Corp. v. Nat’l Marine Fisheries Serv.*, 307 F.3d 1214, 1218 (9th Cir. 2002) (“high degree of deference” if interpretation is not plainly erroneous or inconsistent with regulation).

173. Consistent with the FDIC Determination and WMILT’s obligations under the Settlement Agreements, on August 14, 2013, WMILT filed a formal application (the “Application”) with the FDIC seeking authorization to pay the agreed upon amounts to each of the Settling Claimants pursuant to the Settlement Agreements.

174. Contemporaneously with the Application, WMILT submitted a letter to the FDIC, dated August 14, 2013, requesting an expedited determination as to whether the Golden Parachute Regulations applied to the balance of the agreements and benefits plans referenced herein that were the subject of potential future settlements between WMILT and certain other Individual Defendants.

175. In particular, WMILT sought a determination as to whether the Golden Parachute Regulations would apply to payments made pursuant to:

- the WMI CIC Agreements;
- certain WMI Retention Bonus Agreements and WMB Retention Bonus Agreements;
- the Confidential Executive Separation Agreement;
- the ETRIP;
- the Executive Officer Severance Plan; and
- the Providian Agreements.

1           176. Acknowledging its limitations, at a hearing on August 22, 2013, the  
2 Bankruptcy Court denied WMILT's Motion to Amend its claims objections to assert the  
3 Federal Regulations as a defense to the Employee Claims on grounds that, *inter alia*, the  
4 "amendment would be futile because any decision [by the Bankruptcy Court] on the legal  
5 issue would not be binding on the FDIC and FRB because they are not parties to the  
6 Omnibus Objections." *See* Bankruptcy Order at 2. However, as an alternative approach to  
7 resolving the threshold question of law, the Bankruptcy Court simultaneously ordered  
8 WMILT to file this "declaratory judgment action (naming the FDIC, FRB, and all claimants)  
9 seeking a determination [as to] whether WMILT is precluded by [the Golden Parachute  
10 Regulations and Automatic Termination Regulation] or any other similar provision from  
11 paying any of the claimants if their claims are allowed." *Id.*



**COUNT I**

(As to Defendants: the FDIC, the FRB, Susan C. Allison, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Robert N. Batt, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Anthony Joseph Bozzuti, Alfred Brooks, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Thomas W. Casey, Daryl D. David, Mary Beth Davis, Andrew J. Eschenbach, William Finzer, Stephen Fortunato, Brian T. Foster, Keith O. Fukui, Debora D. Horvath, Matthew Gaspard, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, John P. McMurray, Randy Melby, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Janquelin F. Schrag, David Schneider, Patricia Schulte, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Mitchell Stevens, Richard Strauch, Jane Suchan, Craig E. Tall, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Anthony F. Vuoto, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, Robert J. Williams, Jr., and Michael R. Zarro)

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the CIC Agreements Are Subject to the Golden Parachute Regulations**

177. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

178. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the WMB CIC Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants with WMB and WMI CIC Agreements have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the CIC Agreements in Bankruptcy Court.<sup>22</sup>

179. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>23</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

<sup>22</sup> As noted *supra* at paragraphs 122-23 herein, both forms of CIC Agreement contain the same definition of “change in control” and are otherwise substantively similar in all relevant respects.

<sup>23</sup> See *supra* at paragraphs 159-60.

180. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

181. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

182. As defined by the Golden Parachute Regulations, WMB was an insured depository institution, and WMI was its affiliated depository institution holding company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment made by WMILT pursuant to the various CIC Agreements to any Individual Defendant named in Count I would constitute a payment in the nature of compensation by an insured depository institution and/or an affiliated depository institution holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

183. Each Individual Defendant named in Count I is a former employee and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in Count I is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h). Therefore, any payments made by WMILT to the Individual Defendants pursuant to the CIC Agreements would be for the benefit of a former IAP.

184. By the terms of the CIC Agreements, payment pursuant to such agreements is contingent on and/or payable on or after the termination of each respective Individual Defendant's primary employment with WMB and/or WMI, as applicable.

185. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the CIC Agreements would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

186. Declaratory relief is necessary because, although the FDIC has indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute Regulation, certain Individual Defendants disagree and claim that the Golden Parachute Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes payments pursuant to any of the agreements or plans at issue without prior regulatory approval may be subject to civil money penalties.

187. WMILT requests a declaratory judgment that:

- (a) any payments made by WMILT to the above-named Individual Defendants pursuant to the CIC Agreements and the CIC Agreements themselves are subject to the Golden Parachute Regulations;
- (b) WMILT is prohibited from making such payments absent regulatory approval from the FDIC and FRB; and
- (c) the Individual Defendants are prohibited from receiving such payments from WMILT absent regulatory approval from the FDIC and FRB.

**COUNT II**

*(As to Defendants: the FDIC, the FRB, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Henry J. Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Curt Brouwer, Kimberly A. Cannon, Daryl D. David, Mary Beth Davis, William Finzer, Brian T. Foster, Peter Freiling, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Kenneth E. Kido, Debora D. Horvath, Michelle McCarthy, Susan McCarthy, John P. McMurray, Rachelle M. Mileur, Thomas E. Morgan, Casey Nault, Michael Reynoldson, Patricia Roberts, David Schneider, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven F. Stein, Richard Strauch, Jane Suchan, David A. Tomlinson, Anthony F. Vuoto, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, Robert J. Williams, Jr, John Woods, Weijia Wu, and Michael R. Zarro)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the Retention Bonus Agreements Are Subject to the Golden Parachute Regulations**

188. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

189. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to certain of the WMB Retention Bonus Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants with WMB and WMI Retention Bonus Agreements have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the Retention Bonus Agreements in Bankruptcy Court.<sup>24</sup>

190. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>25</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

<sup>24</sup> As noted at paragraph 128 herein, both forms of the Retention Bonus Agreement reference the same definition of “change in control” and are otherwise substantively similar in all relevant respects.

<sup>25</sup> See *supra* at paragraphs 159-60.

1           191. Shortly thereafter, on September 25, 2008, WMB experienced another  
2 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
3 FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
4 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
5 pursuant to the Purchase and Assumption Agreement.

6           192. The following day, on September 26, 2008, each of the Debtors  
7 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
8 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

9           193. As defined by the Golden Parachute Regulations, WMB was an  
10 insured depository institution, and WMI was its affiliated depository institution holding  
11 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
13 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
14 payment made by WMILT pursuant to the various Retention Bonus Agreements to any  
15 Individual Defendant named in Count II would constitute a payment in the nature of  
16 compensation by an insured depository institution and/or an affiliated depository institution  
17 holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

18           194. Each Individual Defendant named in Count II is a former employee  
19 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
20 Count II is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
21 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
22 Retention Bonus Agreements would be for the benefit of a former IAP.

23           195. By the terms of the Retention Bonus Agreements, payment pursuant to  
24 such agreements is contingent on and/or payable on or after the termination of each  
25 respective Individual Defendant's primary employment with WMB and/or WMI, as  
26 applicable.

1           196. In their Employee Claims, the Individual Defendants have alleged that  
 2 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
 3 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
 4 applicable, was terminated in connection with, and at a time when the applicable entity  
 5 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the  
 6 Retention Bonus Agreements would necessarily be received on or after a Distress Event,  
 7 including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

8           197. Declaratory relief is necessary because, although the FDIC has  
 9 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
 10 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
 11 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
 12 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
 13 payments pursuant to any of the agreements or plans at issue without prior regulatory  
 14 approval may be subject to civil money penalties.

15           198. WMILT requests a declaratory judgment that:

- 16           (a) any payments made by WMILT to the above-named Individual
- 17                 Defendants pursuant to the Retention Bonus Agreements are
- 18                 subject to the Golden Parachute Regulations;
- 19           (b) WMILT is prohibited from making such payments absent
- 20                 regulatory approval from the FDIC and FRB; and
- 21           (c) the Individual Defendants are prohibited from receiving such
- 22                 payments from WMILT absent regulatory approval from the
- 23                 FDIC and FRB.
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1 **COUNT III**

2 *(As to Defendants: the FDIC, the FRB, Susan C. Allison, Marc Malone, Michelle McCarthy,*  
 3 *John P. McMurray, Chandan Sharma, Mitchell Stevens, Richard Strauch, Andrew Tauber,*  
 4 *Radha Thompson, and Ann Tierney)*

5 **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants**  
 6 **Pursuant to the Cash Long Term Incentive Agreements Are Subject to the Golden**  
 7 **Parachute Regulations**

8 199. Plaintiff, WMILT, incorporates by reference the allegations of  
 9 paragraphs 1 through 176 of the Complaint as if set forth herein.

10 200. An actual controversy exists between the parties as the FDIC has  
 11 determined that any payments made pursuant to the Cash Long Term Incentive Agreements  
 12 are subject to the Golden Parachute Regulations and that WMILT is prohibited from making  
 13 such payments without prior regulatory approval; yet, certain Individual Defendants with  
 14 Cash Long Term Incentive Agreements have disputed the applicability of the Golden  
 15 Parachute Regulations and continue to seek payments pursuant to Cash Long Term Incentive  
 16 Agreements in Bankruptcy Court.

17 201. On or around September 18, 2008, WMB experienced a Distress Event  
 18 when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>26</sup> See 12  
 19 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

20 202. Shortly thereafter, on September 25, 2008, WMB experienced another  
 21 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
 22 FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
 23 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
 24 pursuant to the Purchase and Assumption Agreement.

25  
 26 <sup>26</sup> See *supra* at paragraphs 159-60.



203. The following day, on September 26, 2008, the Debtors experienced a Distress Event when they filed petitions for chapter 11 bankruptcy protection. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

204. As defined by the Golden Parachute Regulations, WMB was an insured depository institution, and WMI was its affiliated depository institution holding company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment made by WMILT pursuant to the various Cash Long Term Incentive Agreements to any Individual Defendant named in Count III would constitute a payment in the nature of compensation by an insured depository institution and/or an affiliated depository institution holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

205. Each Individual Defendant named in Count III is a former employee and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in Count III is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h). Therefore, any payments made by WMILT to the Individual Defendants pursuant to the Cash Long Term Incentive Agreements would be for the benefit of a former IAP.

206. By the terms of the Cash Long Term Incentive Agreements, payment pursuant to such agreements is contingent on and/or payable on or after the termination of each respective Individual Defendant's primary employment with WMB and/or WMI, as applicable.

207. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the

1 Retention Bonus Agreements would necessarily be received on or after a Distress Event,  
2 including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

3 208. Declaratory relief is necessary because, although the FDIC has  
4 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
5 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
6 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
7 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
8 payments pursuant to any of the agreements or plans at issue without prior regulatory  
9 approval may be subject to civil money penalties.

10 209. WMILT requests a declaratory judgment that:

- 11 (a) any payments made by WMILT to the above-named Individual  
12 Defendants pursuant to the Cash Long Term Incentive  
13 Agreements are subject to the Golden Parachute Regulations;  
14 (b) WMILT is prohibited from making such payments absent  
15 regulatory approval from the FDIC and FRB; and  
16 (c) the Individual Defendants are prohibited from receiving such  
17 payments from WMILT absent regulatory approval from the  
18 FDIC and FRB.  
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**COUNT IV**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Sean Beckett, Henry J. Berens, Robert C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Kimberly A. Cannon, Mary Beth Davis, Duane Duck, Camille Everett, Michele S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, Marc Malone, Thomas E. Morgan, John H. Murphy, Casey Nault, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Chandan Sharma, Scott Shaw, Genevieve Smith, Richard Strauch, Radha Thompson, Ann Tierney, David A. Tomlinson, Stephen E. Whittaker, Weijia Wu, and Michael R. Zarro)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the WaMu Severance Plan Are Subject to the Golden Parachute Regulations**

210. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

211. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the WaMu Severance Plan are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants party to the WaMu Severance Plan have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the WaMu Severance Plan in Bankruptcy Court.

212. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>27</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

213. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

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<sup>27</sup> See *supra* at paragraphs 159-60.

1           214. The following day, on September 26, 2008, each of the Debtors  
2 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
3 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

4           215. As defined by the Golden Parachute Regulations, WMB was an  
5 insured depository institution, and WMI was its affiliated depository institution holding  
6 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
7 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
8 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
9 payment made by WMILT pursuant to the WaMu Severance Plan to any Individual  
10 Defendant named in Count IV would constitute a payment in the nature of compensation by  
11 an insured depository institution and/or an affiliated depository institution holding company.  
12 *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

13           216. Each Individual Defendant named in Count IV is a former employee  
14 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
15 Count IV is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
16 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
17 WaMu Severance Plan would be for the benefit of a former IAP.

18           217. By the terms of the WaMu Severance Plan, payment pursuant to such  
19 agreements is contingent on and/or payable on or after the termination of each respective  
20 Individual Defendant's primary employment with WMB and/or WMI, as applicable.

21           218. In their Employee Claims, the Individual Defendants have alleged that  
22 they were terminated as a result of one or more of the Distress Events. In fact, each of the  
23 Individual Defendants' employment relationship or affiliation with WMI or WMB, as  
24 applicable, was terminated in connection with, and at a time when the applicable entity  
25 satisfied one or more of the Distress Events. Thus, any payment made pursuant to the WaMu  
26

1 Severance Plan would necessarily be received on or after a Distress Event, including, but not  
 2 limited to, the Bank Seizure and WMI's bankruptcy petition.

3 219. Declaratory relief is necessary because, although the FDIC has  
 4 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
 5 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
 6 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
 7 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
 8 payments pursuant to any of the agreements or plans at issue without prior regulatory  
 9 approval may be subject to civil money penalties.

10 220. WMILT requests a declaratory judgment that:

- 11 (a) any payments made by WMILT to the above-named Individual  
 12 Defendants pursuant to the WaMu Severance Plan are subject  
 to the Golden Parachute Regulations;
- 13 (b) WMILT is prohibited from making such payments absent  
 14 regulatory approval from the FDIC and FRB; and
- 15 (c) the Individual Defendants are prohibited from receiving such  
 16 payments from WMILT absent regulatory approval from the  
 17 FDIC and FRB.

**COUNT V**

(As to Defendants: the FDIC, the FRB, Susan C. Allison, Edward F. Bach, Todd H. Baker, Melba Ann Bartels, Robert N. Batt, David Beck, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Alfred Brooks, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon, Gregory Alan Carlisle, Thomas W. Casey, Daryl D. David, Mary Beth Davis, Jake D. Domer, Duane Duck, Andrew J. Eschenbach, Camille Everett, Jacqueline Ferguson, William Finzer, Stephen Fortunato, Brian T. Foster, Peter Freiling, Keith O. Fukui, Matthew Gaspard, Michele S. Grau-Iversen, Tammy Harrington, Robert C. Hill, Debora D. Horvath, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido, Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Susan McCarthy, John P. McMurray, Randy Melby, Joe Anthony Melo, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson, Patricia Roberts, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Stephen J. Rotella, Foad Said, David Schneider, Januelin F. Schrag, Patricia Schulte, Sharma Chandan, Scott Shaw, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Steven F. Stein, Mitchell Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney, David A. Tomlinson, Benjamin Turk, Anthony F. Vuoto, Bruce Weber, Stephen E. Whittaker, Robert J. Williams, Jr., John F. Woods, Weijia Wu, and Michael R. Zarro)

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the Equity Incentive Plan Are Subject to the Golden Parachute Regulations**

221. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

222. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the Equity Incentive Plan are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants party to the Equity Incentive Plan have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the Equity Incentive Plan in Bankruptcy Court.

223. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>28</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

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<sup>28</sup> See *supra* at paragraphs 159-60.

1           224. Shortly thereafter, on September 25, 2008, WMB experienced another  
 2 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
 3 FDIC Receiver as receiver for WMB. *See* 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
 4 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
 5 pursuant to the Purchase and Assumption Agreement.

6           225. The following day, on September 26, 2008, each of the Debtors  
 7 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
 8 Bankruptcy Code. *See* 12 C.F.R. § 359.1(f)(1)(ii)(A).

9           226. As defined by the Golden Parachute Regulations, WMB was an  
 10 insured depository institution, and WMI was its affiliated depository institution holding  
 11 company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12  
 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
 13 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
 14 payment made by WMILT pursuant to the Equity Incentive Plan to any Individual Defendant  
 15 named in Count V would constitute a payment in the nature of compensation by an insured  
 16 depository institution and/or an affiliated depository institution holding company. *See* FDIC  
 17 Determination (a copy of which is annexed as **Exhibit B**).

18           227. Each Individual Defendant named in Count V is a former employee  
 19 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
 20 Count V is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h).  
 21 Therefore, any payments made by WMILT to the Individual Defendants pursuant to the  
 22 Equity Incentive Plan would be for the benefit of a former IAP.

23           228. By the terms of the Equity Incentive Plan, payment pursuant to such  
 24 agreements is contingent on and/or payable on or after the termination of each respective  
 25 Individual Defendant's primary employment with WMB and/or WMI, as applicable.  
 26

229. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the Equity Incentive Plan would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

230. Declaratory relief is necessary because, although the FDIC has indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute Regulation, certain Individual Defendants disagree and claim that the Golden Parachute Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes payments pursuant to any of the agreements or plans at issue without prior regulatory approval may be subject to civil money penalties.

231. WMILT requests a declaratory judgment that:

- (a) any payments made by WMILT to the above-named Individual Defendants pursuant to the Equity Incentive Plan are subject to the Golden Parachute Regulations;
- (b) WMILT is prohibited from making such payments absent regulatory approval from the FDIC and FRB; and
- (c) the Individual Defendants are prohibited from receiving such payments from WMILT absent regulatory approval from the FDIC and FRB.



**COUNT VI**

*(As to Defendants: the FDIC, the FRB, Alfred Brooks, Thomas W. Casey, Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David Schneider, Craig E. Tall, and Anthony F. Vuoto)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the ETRIP Are Subject to the Golden Parachute Regulations**

232. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

233. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the ETRIP are subject to the Golden Parachute Regulations and WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants party to the ETRIP have disputed the applicability of the Golden Parachute Regulations and continue to seek payments pursuant to the ETRIP in Bankruptcy Court.

234. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>29</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

235. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

236. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

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<sup>29</sup> See *supra* at paragraphs 159-60.

237. As defined by the Golden Parachute Regulations, WMB was an insured depository institution, and WMI was its affiliated depository institution holding company at the time the Individual Defendants' claims are alleged to have arisen. *See* 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment made by WMILT pursuant to the ETRIP to any Individual Defendant named in Count VI would constitute a payment in the nature of compensation by an insured depository institution and/or an affiliated depository institution holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

238. Each Individual Defendant named in Count VI is a former employee and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in Count VI is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h). Therefore, any payments made by WMILT to the Individual Defendants pursuant to the ETRIP would be for the benefit of a former IAP.

239. By the terms of the ETRIP, payment pursuant to such agreements is contingent on and/or payable on or after the termination of each respective Individual Defendant's primary employment with WMB and/or WMI, as applicable.

240. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the ETRIP would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

241. Declaratory relief is necessary because, although the FDIC has indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain

1 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute  
 2 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
 3 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
 4 payments pursuant to any of the agreements or plans at issue without prior regulatory  
 5 approval may be subject to civil money penalties.

6 242. WMILT requests a declaratory judgment that:

- 7 (a) any payments made by WMILT to the above-named Individual  
 8 Defendants pursuant to the ETRIP are subject to the Golden  
 9 Parachute Regulations;
- 10 (b) WMILT is prohibited from making such payments absent  
 11 regulatory approval from the FDIC and FRB; and
- 12 (c) the Individual Defendants are prohibiting from receiving such  
 13 payments from WMILT absent regulatory approval from the  
 14 FDIC and FRB.

## 15 COUNT VII

16 *(As to Defendants: the FDIC, the FRB, Todd H. Baker, Alfred Brooks, Thomas W. Casey,*  
 17 *Daryl D. David, Debora D. Horvath, John P. McMurray, Stephen J. Rotella, David*  
 18 *Schneider, Anthony F. Vuoto, and Robert J. Williams, Jr.)*

### 19 **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants** 20 **Pursuant to the WaMu Executive Officer Severance Plan Are Subject to the Golden** 21 **Parachute Regulations**

22 243. Plaintiff, WMILT, incorporates by reference the allegations of  
 23 paragraphs 1 through 176 of the Complaint as if set forth herein.

24 244. An actual controversy exists between the parties as the FDIC has  
 25 determined that any payments made pursuant to the WaMu Executive Officer Severance Plan  
 26 are subject to the Golden Parachute Regulations and WMILT is prohibited from making such  
 payments without prior regulatory approval; yet, certain Individual Defendants party to the  
 WaMu Executive Officer Severance Plan have disputed the applicability of the Golden  
 Parachute Regulations and continue to seek payments pursuant to the WaMu Executive  
 Officer Severance Plan in Bankruptcy Court.

245. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>30</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

246. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

247. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

248. As defined by the Golden Parachute Regulations, WMB was an insured depository institution, and WMI was its affiliated depository institution holding company at the time the Individual Defendants' claims are alleged to have arisen. See 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment made by WMILT pursuant to the WaMu Executive Officer Severance Plan to any Individual Defendant named in Count VII would constitute a payment in the nature of compensation by an insured depository institution and/or an affiliated depository institution holding company. See FDIC Determination (a copy of which is annexed as **Exhibit B**).

249. Each Individual Defendant named in Count VII is a former employee and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in Count VII is an IAP within the meaning of 12 C.F.R. § 359.1(h). See 12 C.F.R. § 359.1(h).

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<sup>30</sup> See *supra* at paragraphs 159-60.

Therefore, any payments made by WMILT to the Individual Defendants pursuant to the WaMu Executive Officer Severance Plan would be for the benefit of a former IAP.

250. By the terms of the WaMu Executive Officer Severance Plan, payment pursuant to such agreements is contingent on and/or payable on or after the termination of each respective Individual Defendant's primary employment with WMB and/or WMI, as applicable.

251. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the WaMu Executive Officer Severance Plan would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

252. Declaratory relief is necessary because, although the FDIC has indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute Regulation, certain Individual Defendants disagree and claim that the Golden Parachute Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes payments pursuant to any of the agreements or plans at issue without prior regulatory approval may be subject to civil money penalties.

253. WMILT requests a declaratory judgment that:

- (a) any payments made by WMILT to the above-named Individual Defendants pursuant to the WaMu Executive Officer Severance Plan are subject to the Golden Parachute Regulations;
- (b) WMILT is prohibited from making such payments absent regulatory approval from the FDIC and FRB; and
- (c) the Individual Defendants are prohibiting from receiving such payments from WMILT absent regulatory approval from the FDIC and FRB.

**COUNT VIII**

*(As to Defendants: the FDIC, the FRB, and John Michael Browning)*

**Declaratory Judgment that Any Payments Made by WMILT to Defendant John Michael Browning Pursuant to the Confidential Executive Separation Agreement Are Subject to the Golden Parachute Regulations**

254. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

255. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the Confidential Executive Separation Agreement are subject to the Golden Parachute Regulations and WMILT is prohibited from making such payments without prior regulatory approval; yet, the Individual Defendant with the Confidential Executive Separation Agreement has disputed the applicability of the Golden Parachute Regulations and continues to seek payments pursuant to the Confidential Executive Separation Agreement in Bankruptcy Court.

256. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>31</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

257. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

258. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

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<sup>31</sup> See *supra* at paragraphs 159-60.

259. As defined by the Golden Parachute Regulations, WMB was an insured depository institution, and WMI was its affiliated depository institution holding company at the time the Individual Defendant's claims are alleged to have arisen. *See* 12 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment made by WMILT pursuant to the Confidential Executive Separation Agreement to the Individual Defendant named in Count VIII would constitute a payment in the nature of compensation by an insured depository institution and/or an affiliated depository institution holding company. *See* FDIC Determination (a copy of which is annexed as **Exhibit B**).

260. The Individual Defendant named in Count VIII is a former employee and/or officer of WMB. Thus, the Individual Defendant named in Count VIII is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h). Therefore, any payments made by WMILT to the Individual Defendant pursuant to the Confidential Executive Separation Agreement would be for the benefit of a former IAP.

261. By the terms of the Confidential Executive Separation Agreement, payment pursuant to such agreement is contingent on and/or payable on or after the termination of the respective Individual Defendant's primary employment with WMB.

262. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the Confidential Executive Separation Agreement would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

263. Declaratory relief is necessary because, although the FDIC has indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute Regulation, certain Individual Defendants disagree and claim that the Golden Parachute Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes payments pursuant to any of the agreements or plans at issue without prior regulatory approval may be subject to civil money penalties.

264. WMILT requests a declaratory judgment that:

- (a) any payments made by WMILT to the above-named Individual Defendant pursuant to the Confidential Executive Separation Agreement are subject to the Golden Parachute Regulations;
- (b) WMILT is prohibited from making such payments absent regulatory approval from the FDIC and FRB; and
- (c) the Individual Defendant is prohibited from receiving such payments from WMILT absent regulatory approval from the FDIC and FRB.

### **COUNT IX**

*(As to Defendants: the FDIC, the FRB, Robert C. Boxberger, Mary Beth Davis, Michele S. Grau-Iversen, Robert C. Hill, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Richard Strauch, Jose O. N. Tagunicar, David A. Tomlinson, Stephen E. Whittaker, and Kathy H. Yeu)*

#### **Declaratory Judgment that Any Payments Made by WMILT to Individual Defendants Pursuant to the Providian Agreements Are Subject to the Golden Parachute Regulations**

265. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

266. An actual controversy exists between the parties as any payments made pursuant to the Providian Agreements are subject to the Golden Parachute Regulations and WMILT is prohibited from making such payments without prior regulatory approval; yet, certain Individual Defendants with Providian Agreements have disputed the applicability



1 of the Golden Parachute Regulations and continue to seek payments pursuant to the  
2 Providian Agreements in Bankruptcy Court.

3 267. On or around September 18, 2008, WMB experienced a Distress Event  
4 when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>32</sup> See 12  
5 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

6 268. Shortly thereafter, on September 25, 2008, WMB experienced another  
7 Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the  
8 FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after  
9 its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC  
10 pursuant to the Purchase and Assumption Agreement.

11 269. The following day, on September 26, 2008, each of the Debtors  
12 experienced a Distress Event when they filed petitions for relief under chapter 11 of the  
13 Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

14 270. As defined by the Golden Parachute Regulations, WMB was an  
15 insured depository institution, and WMI was its affiliated depository institution holding  
16 company at the time the Individual Defendants' claims are alleged to have arisen. See 12  
17 C.F.R. §§ 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest  
18 thereto, are subject to the restrictions of the Golden Parachute Regulations. Specifically, any  
19 payment made by WMILT pursuant to the various Providian Agreements to any Individual  
20 Defendant named in Count IX would constitute a payment in the nature of compensation by  
21 an insured depository institution and/or an affiliated depository institution holding company.  
22 See FDIC Determination (a copy of which is annexed as **Exhibit B**).

23 271. Each Individual Defendant named in Count IX is a former employee  
24 and/or officer of WMB or WMI, as applicable. Thus, each Individual Defendant named in  
25

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26 <sup>32</sup> See *supra* at paragraphs 159-60.

Count IX is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R. § 359.1(h). Therefore, any payments made by WMILT to the Individual Defendants pursuant to the Providian Agreements would be for the benefit of a former IAP.

272. By the terms of the Providian Agreements, payment pursuant to such agreements is contingent on and/or payable on or after the termination of each respective Individual Defendant's primary employment with WMB and/or WMI, as applicable.

273. In their Employee Claims, the Individual Defendants have alleged that they were terminated as a result of one or more of the Distress Events. In fact, each of the Individual Defendants' employment relationship or affiliation with WMI or WMB, as applicable, was terminated in connection with, and at a time when the applicable entity satisfied one or more of the Distress Events. Thus, any payment made pursuant to the Providian Agreements would necessarily be received on or after a Distress Event, including, but not limited to, the Bank Seizure and WMI's bankruptcy petition.

274. Declaratory relief is necessary because, although the FDIC has indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute Regulation, certain Individual Defendants disagree and claim that the Golden Parachute Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes payments pursuant to any of the agreements or plans at issue without prior regulatory approval may be subject to civil money penalties.

275. WMILT requests a declaratory judgment that:

- (a) any payments made by WMILT to the above-named Individual Defendants pursuant to the Providian Agreements are subject to the Golden Parachute Regulations;
- (b) WMILT is prohibited from making such payments absent regulatory approval from the FDIC and FRB; and
- (c) The Individual Defendants are prohibited receiving such payments from WMILT absent regulatory approval from the FDIC and FRB.

**COUNT X**

*(As to Defendants: the FDIC, the FRB, and Stephen J. Rotella)*

**Declaratory Judgment that Any Payments Made by WMILT to Individual Defendant Stephen J. Rotella Pursuant to the Rotella CIC Agreement on Account of Alternate or Contingent Claims Are Subject to the Golden Parachute Regulations**

276. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

277. An actual controversy exists between the parties as the FDIC has determined that any payments made pursuant to the WMB CIC Agreements are subject to the Golden Parachute Regulations and that WMILT is prohibited from making such payments without prior regulatory approval; yet, Defendant Rotella continues to seek payments pursuant to the Rotella CIC Agreement in Bankruptcy Court.<sup>33</sup>

278. On or around September 18, 2008, WMB experienced a Distress Event when it was assigned in writing a composite regulatory CAMELS Rating of 4.<sup>34</sup> See 12 C.F.R. § 359.1(f)(1)(ii)(C)-(D).

279. Shortly thereafter, on September 25, 2008, WMB experienced another Distress Event when, by order number 2008-36, the OTS seized WMB and appointed the FDIC Receiver as receiver for WMB. See 12 C.F.R. § 359.1(f)(1)(ii)(B). Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB to JPMC pursuant to the Purchase and Assumption Agreement.

280. The following day, on September 26, 2008, each of the Debtors experienced a Distress Event when they filed petitions for relief under chapter 11 of the Bankruptcy Code. See § 359.1(f)(1)(ii)(A).

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<sup>33</sup> The Rotella CIC Agreement contains the same definition of “change in control” as contained in the WMB CIC Agreements and is otherwise substantively similar in all relevant respects.

<sup>34</sup> See *supra* at paragraphs 159-60.

1           281. As defined by the Golden Parachute Regulations, WMB was an  
2 insured depository institution, and WMI was its affiliated depository institution holding  
3 company at the time Defendant Rotella's claims is alleged to have arisen. *See* 12 C.F.R. §§  
4 359.1(b), 359.1(g). Accordingly, WMI and WMILT, as successor in interest thereto, are  
5 subject to the restrictions of the Golden Parachute Regulations. Specifically, any payment  
6 made by WMILT pursuant to the Rotella CIC Agreement to Defendant Rotella would  
7 constitute a payment in the nature of compensation by an insured depository institution  
8 and/or an affiliated depository institution holding company. *See* FDIC Determination (a  
9 copy of which is annexed as **Exhibit B**).

10           282. Defendant Rotella is a former employee and officer of WMB. Thus,  
11 Defendant Rotella is an IAP within the meaning of 12 C.F.R. § 359.1(h). *See* 12 C.F.R.  
12 § 359.1(h). Therefore, any payments made by WMILT to Defendant Rotella pursuant to the  
13 Rotella CIC Agreement would be for the benefit of a former IAP.

14           283. By the terms of the Rotella CIC Agreement, payment pursuant to such  
15 agreement is contingent on and/or payable on or after the termination of Defendant Rotella's  
16 primary employment with WMI.

17           284. Defendant Rotella has alleged that he was terminated in connection  
18 with one or more of the Distress Events. In fact, Defendant Rotella's employment  
19 relationship or affiliation with WMI or WMB, as applicable, was terminated in connection  
20 with, and at a time when the applicable entity satisfied one or more of the Distress Events.  
21 Thus, any payment made pursuant to the Rotella CIC Agreement would necessarily be  
22 received on or after a Distress Event, including, but not limited to, the Bank Seizure and  
23 WMI's bankruptcy petition.

24           285. Declaratory relief is necessary because, although the FDIC has  
25 indicated in the FDIC Determination that the Golden Parachute Regulations apply to certain  
26 agreements and plans at issue and WMILT has asserted the defense of the Golden Parachute

1 Regulation, certain Individual Defendants disagree and claim that the Golden Parachute  
 2 Regulations do not apply. Moreover, as the FDIC has made clear, any entity that makes  
 3 payments pursuant to any of the agreements or plans at issue without prior regulatory  
 4 approval may be subject to civil money penalties.

5 286. WMILT requests a declaratory judgment that:

- 6 (a) any payments made by WMILT to the above-named Individual  
 7 Defendant pursuant to the Rotella CIC Agreement are subject  
 8 to the Golden Parachute Regulations;
- 9 (b) WMILT is prohibited from making such payments absent  
 10 regulatory approval from the FDIC and FRB; and
- 11 (c) Defendant Rotella is prohibited from receiving such payments  
 12 from WMILT absent regulatory approval from the FDIC and  
 13 FRB.

## 14 COUNT XI

15 *(As to Defendants: the FDIC, the FRB, Susan C. Allison, Edward F. Bach, Melba Ann*  
 16 *Bartels, Robert N. Batt, Sean Beckett, Henry J. Berens, Bruce W. Bivert, Anthony Joseph*  
 17 *Bozzuti, Curt Brouwer, John M. Browning, Gregory G. Camas, Kimberly A. Cannon,*  
 18 *Gregory Alan Carlisle, Gennadiy Darakhovskiy, Mary Beth Davis, Andrew J. Eschenbach,*  
 19 *William Finzer, Stephen Fortunato, Brian T. Foster, Keith O. Fukui, Matthew Gaspard,*  
 20 *Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Rajiv Kapoor, Kenneth E. Kido,*  
 21 *Suzanne R. Lehrberger, Ronald M. Lowery, Marc Malone, Michelle McCarthy, Randy*  
 22 *Melby, Rachelle M. Mileur, Thomas E. Morgan, John H. Murphy, Michael Reynoldson,*  
 23 *Laura C. Rogers Rodrigues, Luis P. Rodriguez, Janquelin F. Schrag, Patricia Schulte,*  
 24 *Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven Kenneth Stearns, Mitchell*  
 25 *Stevens, Richard Strauch, Jane Suchan, Andrew Tauber, Radha Thompson, Ann Tierney,*  
 26 *David A. Tomlinson, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, and Michael*  
*R. Zarro)*

### 27 **Declaratory Judgment that the WMB CIC Agreement was Automatically Terminated** 28 **Pursuant to 12 C.F.R. § 163.39**

29 287. Plaintiff, WMILT, incorporates by reference the allegations of  
 30 paragraphs 1 through 176 of the Complaint as if set forth herein.

31 288. An actual controversy exists between WMILT and the Individual  
 32 Defendants listed in Count XI as the United States Court of Appeals for the Ninth Circuit and  
 33 the FDIC have already determined that the WMB CIC Agreements automatically terminated

1 on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual  
2 Defendants continue to maintain that WMILT is liable for the obligations thereunder.

3 289. WMB was a federal savings association chartered pursuant to the  
4 Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations  
5 issued thereunder, including 12 C.F.R. § 163.39.

6 290. The Individual Defendants named in Count XI are former employees  
7 of WMB and each entered into a WMB CIC Agreement.

8 291. The WMB CIC Agreements set forth the material terms and conditions  
9 of each Individual Defendants' employment, and therefore, are employment contracts for the  
10 purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination  
11 Handbook, § 310.44.

12 292. On September 25, 2008, by order number 2008-36, the director of the  
13 OTS determined, among other things, that WMB was "in an unsafe or unsound condition to  
14 transact business" and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
15 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
16 defined in section 3(x)(1) of the FDIA.

17 293. As a result of the default, the WMB CIC Agreements entered into  
18 between WMB and the Individual Defendants listed in Count XI automatically terminated on  
19 September 25, 2008.

20 294. WMILT requests a declaratory judgment that:

- 21 (a) the WMB CIC Agreements automatically terminated on
- 22 September 25, 2008; and
- 23 (b) WMILT is not liable for any obligations arising thereunder.

**COUNT XII**

*(As to Defendants: the FDIC, the FRB, Edward F. Bach, Melba Ann Bartels, Henry J. Berens, Bruce W. Bivert, Robert C. Bjorklund, Anthony Joseph Bozzuti, Carey M. Brennan, Curt Brouwer, Kimberly A. Cannon, Mary Beth Davis, William Finzer, Brian T. Foster, Peter Freilinger, Michele S. Grau-Iversen, Robert C. Hill, Jeffrey Jones, Kenneth E. Kido, Michelle McCarthy, Susan McCarthy, Rachelle M. Mileur, Thomas E. Morgan, Casey Nault, Michael Reynoldson, Patricia Roberts, Chandan Sharma, Genevieve Smith, Jacob E. Sorenson, Steven F. Stein, Richard Strauch, Jane Suchan, David A. Tomlinson, Bruce Weber, Jeffrey P. Weinstein, Stephen E. Whittaker, John F. Woods, Weijia Wu, and Michael R. Zarro)*

**Declaratory Judgment that the WMB Retention Bonus Agreements Were Automatically Terminated Pursuant to 12 C.F.R. § 163.39**

295. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

296. An actual controversy exists between WMILT and the Individual Defendants listed in Count XII as the United States Court of Appeals for the Ninth Circuit and the FDIC have already determined that the WMB Retention Bonus Agreements automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

297. WMB was a federal savings association chartered pursuant to the Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations issued thereunder, including 12 C.F.R. § 163.39.

298. The Individual Defendants named in Count XII are former employees of WMB and each entered into a WMB Retention Bonus Agreement.

299. Each WMB Retention Bonus Agreement sets forth the material terms and conditions of each Individual Defendants' employment, and therefore, are employment contracts for the purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination Handbook, § 310.44.



300. On September 25, 2008, by order number 2008-36, the director of the OTS determined, among other things, that WMB was “in an unsafe or unsound condition to transact business” and accordingly appointed the FDIC Receiver as receiver for WMB. As a result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is defined in section 3(x)(1) of the FDIA.

301. As a result of the default, the WMB Retention Bonus Agreements entered into between WMB and the Individual Defendants listed in Count XII automatically terminated on September 25, 2008.

302. WMILT requests a declaratory judgment that:

- (a) the WMB Retention Bonus Agreements automatically terminated on September 25, 2008; and
- (b) WMILT is not liable for any obligations arising thereunder.

### **COUNT XIII**

*(As to Defendants: the FDIC, the FRB, Susan C. Allison, Sean Beckett, Henry J. Berens, Robert C. Bjorklund, Anthony Joseph Bozzuti, Gary P. Brady, Kimberly A. Cannon, Mary Beth Davis, Duane Duck, Camille Everett, Michele S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, Marc Malone, Thomas E. Morgan, John H. Murphy, Casey Nault, Michael Reynoldson, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Chandan Sharma, Scott Shaw, Genevieve Smith, Richard Strauch, Radha Thompson, Ann Tierney, David A. Tomlinson, Stephen E. Whittaker, Weijia Wu, and Michael R. Zarro)*

#### **Declaratory Judgment that the WaMu Severance Plan was Automatically Terminated Pursuant to 12 C.F.R. § 163.39**

303. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

304. An actual controversy exists between WMILT and the Individual Defendants listed in Count XIII as the United States Court of Appeals for the Ninth Circuit and the FDIC have already determined that the WaMu Severance Plan automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named



1 Individual Defendants continue to maintain that WMILT is liable for the obligations  
2 thereunder.

3 305. WMB was a federal savings association chartered pursuant to the  
4 Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations  
5 issued thereunder, including 12 C.F.R. § 163.39.

6 306. The Individual Defendants named in Count XIII are former employees  
7 of WMB and each entered into a WaMu Severance Plan.

8 307. The WaMu Severance Plan sets forth the material terms and conditions  
9 of each Individual Defendants' employment, and therefore, are employment contracts for the  
10 purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination  
11 Handbook, § 310.44.

12 308. On September 25, 2008, by order number 2008-36, the director of the  
13 OTS determined, among other things, that WMB was "in an unsafe or unsound condition to  
14 transact business" and accordingly appointed the FDIC Receiver as receiver for WMB. As a  
15 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
16 defined in section 3(x)(1) of the FDIA.

17 309. As a result of the default, the WaMu Severance Plan entered into  
18 between WMB and the Individual Defendants listed in Count XIII automatically terminated  
19 on September 25, 2008.

20 310. WMILT requests a declaratory judgment that:

- 21 (a) the WaMu Severance Plan automatically terminated on  
22 September 25, 2008; and  
23 (b) WMILT is not liable for any obligations arising thereunder.  
24  
25  
26

**COUNT XIV**

*(As to Defendants: the FDIC, the FRB, Robert C. Boxberger, Mary Beth Davis, Michele S. Grau-Iversen, Robert C. Hill, Robert G. Merritt, Michael Rapaport, Laura C. Rogers Rodrigues, Luis P. Rodriguez, Daniel Shanks, Richard Strauch, Jose O. N. Tagunicar, David A. Tomlinson, John Webber, Stephen E. Whittaker, and Kathy H. Yeu)*

**Declaratory Judgment that the Providian Agreements Were Automatically Terminated Pursuant to 12 C.F.R. § 163.39**

311. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

312. An actual controversy exists between WMILT and the Individual Defendants listed in Count XIV as the United States Court of Appeals for the Ninth Circuit and the FDIC have already determined that the Providian Agreements automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

313. WMB was a federal savings association chartered pursuant to the Home Owners' Loan Act, 12 U.S.C. §§ 1461-70, and as such, was subject to the regulations issued thereunder, including 12 C.F.R. § 163.39.

314. The Individual Defendants named in Count XIV are former employees of WMB and each entered into a Providian Agreement.

315. The Providian Agreements set forth the material terms and conditions of each Individual Defendants' employment, and therefore, are employment contracts for the purposes of 12 C.F.R. § 163.39(b), as that term is defined in the OTS Examination Handbook, § 310.44.

316. On September 25, 2008, by order number 2008-36, the director of the OTS determined, among other things, that WMB was "in an unsafe or unsound condition to transact business" and accordingly appointed the FDIC Receiver as receiver for WMB. As a

1 result of the Bank Seizure on September 25, 2008, WMB was in default, as that term is  
2 defined in section 3(x)(1) of the FDIA.

3 317. As a result of the default, the Providian Agreements entered into  
4 between WMB and the Individual Defendants listed in Count XIV automatically terminated  
5 on September 25, 2008.

6 318. WMILT requests a declaratory judgment that:

- 7 (a) the Providian Agreements automatically terminated on  
8 September 25, 2008; and  
(b) WMILT is not liable for any obligations arising thereunder.

### 9 **COUNT XV**

10 *(As to Defendants: the FDIC, the FRB Robert N. Batt, Sean Beckett, Mary Beth Davis, Brian*  
11 *T. Foster, Keith O. Fukui, Michelle S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, Kenneth*  
12 *E. Kido, Ronald M. Lowery, Randy Melby, Michelle McCarthy, John H. Murphy, Janquelin*  
13 *F. Schrag, Jacob E. Sorensen, Mitchell Stevens, Jane Suchan, Andrew Tauber, Radha*  
*Thompson, Ann Tierney, Bruce Weber, Jeffrey P. Weinstein, and Stephen E. Whittaker)*

#### 14 **Declaratory Judgment that the Individual Defendants Listed in Count XV Are Barred** 15 **by the Doctrines of *Res Judicata* and Collateral Estoppel from Asserting Claims Based** **on the WMB CIC Agreement Against WMILT**

16 319. Plaintiff, WMILT, incorporates by reference the allegations of  
17 paragraphs 1 through 176 of the Complaint as if set forth herein.

18 320. An actual controversy exists between WMILT and the Individual  
19 Defendants listed in Count XV as the United States Court of Appeals for the Ninth Circuit  
20 has already determined that the WMB CIC Agreement automatically terminated on  
21 September 25, 2008 as a result of the Bank Seizure; yet, the above named Individual  
22 Defendants continue to maintain that WMILT is liable for the obligations thereunder.

23 321. The Individual Defendants named in Count XV filed administrative  
24 claims with the FDIC Receiver seeking payments allegedly owed under the WMB CIC  
25 Agreement. After the FDIC Receiver denied the administrative claims, the Individual  
26 Defendants named in Count XIV appealed to the Western District of Washington (the

1 “Williams Action”). *See Williams v. FDIC*, No. 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011),  
 2 *aff’d*, 492 Fed. App’x. 796 (9th Cir. 2012). The FDIC Receiver filed a motion to dismiss the  
 3 Williams Action by asserting that the “Automatic Termination Regulation” rendered the  
 4 various employment contracts unenforceable against the FDIC Receiver.

5 322. On August 30, 2011, the Western District Court of Washington  
 6 granted the FDIC Receiver’s motion to dismiss, and the decision was upheld on appeal to the  
 7 United States Court of Appeals for the Ninth Circuit. *See Williams* 492 Fed. App’x. 796.

8 323. The Individual Defendants named in Count XV had a full and fair  
 9 opportunity in the Williams Action to litigate the issue of whether the WMB CIC Agreement  
 10 automatically terminated pursuant to 12 C.F.R. § 163.39.

11 324. The issue of whether the WMB CIC Agreement automatically  
 12 terminated pursuant to 12 C.F.R. § 163.39 was actually litigated in the Williams Action.

13 325. The Individual Defendants named in Count XV lost the issue as a  
 14 result of a final judgment in the Williams Action.

15 326. The Individual Defendants named in Count XV was a party in the  
 16 Williams Action.

17 327. WMILT requests a declaratory judgment that:

- 18 (a) the above-named Individual Defendants are barred by the  
 19 doctrines of *res judicata* and collateral estoppel from asserting  
 20 claims based on the WMB CIC Agreement against WMILT;  
 21 and
- (b) WMILT is not liable for any obligations arising thereunder.

**COUNT XVI**

*(As to Defendants: the FDIC, the FRB, Sean Beckett, Robert C. Bjorklund, Mary Beth Davis, Camille Everett, Michelle S. Grau-Iversen, Robert C. Hill, Rajiv Kapoor, John H. Murphy, Scott Shaw, Radha Thompson, Ann Tierney, and Stephen E. Whittaker)*

**Declaratory Judgment that the Individual Defendants Listed in Count XVI Are Barred by the Doctrines of *Res Judicata* and Collateral Estoppel from Asserting Claims Based on the WaMu Severance Plan Against WMILT**

328. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

329. An actual controversy exists between WMILT and the Individual Defendants listed in Count XVI as the United States Court of Appeals for the Ninth Circuit has already determined that the WaMu Severance Plan automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

330. The Individual Defendants named in Count XVI filed administrative claims with the FDIC Receiver seeking payments allegedly owed under the WaMu Severance Plan. After the FDIC Receiver denied the administrative claims, the Individual Defendants named in Count XVI appealed to the Western District of Washington. *See Williams v. FDIC*, 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), *aff'd*, 492 Fed. App'x. 796 (9th Cir. 2012). The FDIC Receiver filed a motion to dismiss the Williams Action by asserting that the "Automatic Termination Regulation" rendered the various employment contracts unenforceable against the FDIC Receiver.

331. On August 30, 2011, the Western District Court of Washington granted the FDIC Receiver's motion to dismiss, and the decision was upheld on appeal to the United States Court of Appeals for the Ninth Circuit. *See Williams*, 492 Fed. App'x. 796.

1           332. The Individual Defendants named in Count XVI had a full and fair  
2 opportunity to litigate the issue of whether the WaMu Severance Plan automatically  
3 terminated pursuant to 12 C.F.R. § 163.39 in the Williams Action.

4           333. The issue of whether the WaMu Severance Plan automatically  
5 terminated pursuant to 12 C.F.R. § 163.39 was actually litigated in the Williams Action.

6           334. The Individual Defendants named in Count XVI lost the issue as a  
7 result of a final judgment in the Williams Action.

8           335. The Individual Defendants named in Count XVI was a party in the  
9 Williams Action.

10          336. WMILT requests a declaratory judgment that:

- 11           (a) the above-named Individual Defendants are barred by the  
12 doctrines of *res judicata* and collateral estoppel from asserting  
13 claims based on the WaMu Severance Plan against WMILT;  
14           (b) WMILT is not liable for any obligations arising thereunder.

**COUNT XVII**

*(As to Defendants: the FDIC, the FRB, Robert C. Bjorklund, Mary Beth Davis, Brian T. Foster, Peter Freilinger, Michelle S. Grau-Iversen, Robert C. Hill, Kenneth E. Kido, Michelle McCarthy, Jacob E. Sorensen, Jane Suchan, Bruce Weber, Jeffrey P. Weinstein, and Stephen E. Whittaker)*

**Declaratory Judgment that the Individual Defendants Listed in Count XVII Are Barred by the Doctrines of *Res Judicata* and Collateral Estoppel from Asserting Claims Based on the WMB Retention Bonus Agreement Against WMILT**

337. Plaintiff, WMILT, incorporates by reference the allegations of paragraphs 1 through 176 of the Complaint as if set forth herein.

338. An actual controversy exists between WMILT and the Individual Defendants listed in Count XVII as the United States Court of Appeals for the Ninth Circuit has already determined that the WMB Retention Bonus Agreement automatically terminated on September 25, 2008 as a result of the Bank Seizure; yet, the above-named Individual Defendants continue to maintain that WMILT is liable for the obligations thereunder.

339. The Individual Defendants named in Count XVII filed administrative claims with the FDIC Receiver seeking payments allegedly owed under the WMB CIC Agreement. After the FDIC Receiver denied the administrative claims, the Individual Defendants named in Count XVII appealed to the Western District of Washington. *See Williams v. FDIC*, 09-504 (RAJ) (W.D. Wash. Aug. 30, 2011), *aff'd*, 492 Fed. App'x. 796 (9th Cir. 2012). The FDIC Receiver filed a motion to dismiss the Williams Action by asserting that the "Automatic Termination Regulation" rendered the various employment contracts unenforceable against the FDIC Receiver.

340. On August 30, 2011, the Western District Court of Washington granted the FDIC Receiver's motion to dismiss, and the decision was upheld on appeal to the United States Court of Appeals for the Ninth Circuit. *See Williams*, 492 Fed. App'x. 796.

1           341. The Individual Defendants named in Count XVII had a full and fair  
2 opportunity to litigate the issue of whether the WMB Retention Bonus Agreement  
3 automatically terminated pursuant to 12 C.F.R. § 163.39 in the Williams Action.

4           342. The issue of whether the WMB Retention Bonus Agreement  
5 automatically terminated pursuant to 12 C.F.R. § 163.39 was actually litigated in the  
6 Williams Action.

7           343. The Individual Defendants named in Count XVII lost the issue as a  
8 result of a final judgment in the Williams Action.

9           344. The Individual Defendants named in Count XVII was a party in the  
10 Williams Action.

11           345. WMILT requests a declaratory judgment that:

- 12                   (a) the above-named Individual Defendants are barred by the  
13 doctrines of *res judicata* and collateral estoppel from asserting  
14 claims based on the WMB Retention Bonus Agreement against  
15 WMILT; and  
16                   (b) WMILT is not liable for any obligations arising thereunder.  
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**PRAYER FOR RELIEF**

Plaintiff respectfully requests the Court to grant the following relief:

1. An order declaring that the CIC Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and that WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
2. An order declaring that the WaMu Severance Plan, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
3. An order declaring that the Retention Bonus Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
4. An order declaring that the Cash Long Term Incentive Agreements, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
5. An order declaring that the Equity Incentive Plan, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
6. An order declaring that the ETRIP, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
7. An order declaring that the WaMu Executive Officer Severance Plan, and any payments made by WMILT to Individual Defendants pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;
8. An order declaring that the Confidential Executive Separation Agreement, and any payments made by WMILT to Individual Defendant John Michael Browning pursuant thereto are subject to the Golden Parachute Regulations, and WMILT is prohibited from making such payments without first obtaining regulatory approval from the FDIC and FRB;

- 1 9. An order declaring that the Providian Agreements, and any payments made by  
2 WMILT to Individual Defendants pursuant thereto are subject to the Golden  
3 Parachute Regulations, and WMILT is prohibited from making such payments  
4 without first obtaining regulatory approval from the FDIC and FRB;
- 5 10. An order declaring that the Stephen J. Rotella WMI CIC Agreement, and any  
6 payments made by WMILT to Stephen J. Rotella pursuant thereto, including  
7 any alternate or contingent claims, are subject to the Golden Parachute  
8 Regulations, and WMILT is prohibited from making such payments without  
9 first obtaining regulatory approval from the FDIC and FRB;
- 10 11. An order declaring that the WMB CIC Agreements were automatically  
11 terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
- 12 12. An order declaring that the WMB Retention Bonus Agreements were  
13 automatically terminated on September 25, 2008 by operation of 12 C.F.R.  
14 § 163.39;
- 15 13. An order declaring that the WaMu Severance Plan was automatically  
16 terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
- 17 14. An order declaring that the Providian Agreements were automatically  
18 terminated on September 25, 2008 by operation of 12 C.F.R. § 163.39;
- 19 15. An order declaring that the Individual Defendants named in Count XIV are  
20 barred by the doctrines of *res judicata* and collateral estoppel from asserting  
21 claims against WMILT based on the WMB CIC Agreement;
- 22 16. An order declaring that the Individual Defendants named in Count XV are  
23 barred by the doctrines of *res judicata* and collateral estoppel from asserting  
24 claims against WMILT based on the WaMu Severance Plan;
- 25 17. An order declaring that the Individual Defendants named in Count XVI are  
26 barred by the doctrines of *res judicata* and collateral estoppel from asserting  
claims against WMILT based on the WMB Retention Bonus Agreement; and
18. Such other relief as the Court deems just and proper.

1                   **WHEREFORE**, Plaintiff, WMILT, prays that the Court enter judgment on  
2 behalf of Plaintiff, WMILT, and against Defendants, the FDIC, the FRB and the Individual  
3 Defendants, and award Plaintiff, WMILT, all requested relief.

4 Dated:   Seattle, Washington  
5           September 20, 2013

6   By: /s/ Edgar G. Sargent

7   By: /s/ Justin A. Nelson

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17 – and –

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